88-1522

Supreme Court, U.S.
FILED
MAR 16 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1988

MCCLATCHY NEWSPAPERS, INC., FRANK MCCULLOCH, DENNY WALSH, JERRY BIER, AND JAMES MCCLUNG,
Petitioners,

VS.

PAUL MOSESIAN,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FIFTH APPELLATE DISTRICT

Of Counsel:
KELLI L. SAGER
KAREN N. FREDERIKSEN
GIBSON, DUNN & CRUTCHER
333 South Grand Avenue
Los Angeles, California 90071
(213) 229-7000
THOMAS E. KOTOSKE
540 University Avenue
Palo Alto, California 94301
(415) 326-5575

ROBERT S. WARREN
*REX S. HEINKE
GIBSON, DUNN & CRUTCHER
333 South Grand Avenue
Los Angeles, California 90071
(213) 229-7000
LARRY L. SIMMS
GIBSON, DUNN & CRUTCHER
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500
Attorneys for Petitioners
**Counsel of Record*

Bowne of Los Angeles, Inc., Law Printers. (213) 742-8600

QUESTION PRESENTED

This Court has held that, under the First Amendment to the United States Constitution, a plaintiff who is a "public official" must prove actual malice by clear and convincing evidence before any damages may be recovered in a defamation action. This Court has not, however, articulated a comprehensive test for determining which government agents or employees are "public officials."

The question presented is:

Whether an individual to whom a state delegates its authority to act in a particular area, but who is not an employee of the government, is a "public official" for purposes of applying the First Amendment's actual malice rule?*

---

* All parties to the proceedings below are named in the caption. Petitioner McClatchy Newspapers, Inc. has no parent company, subsidiary (except wholly owned subsidiaries), or affiliate within the meaning of Supreme Court Rule 28.1.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	2
JURISDICTION	3
CONSTITUTIONAL PROVISIONS INVOLVED	4
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	9
I. THE COURT OF APPEAL'S DECISION IS FINAL UNDER 28 U.S.C. § 1257(a)	9
II. CERTIORARI SHOULD BE GRANTED TO RESOLVE AN IMPORTANT AND RECURRING CONSTITUTIONAL QUESTION LEFT OPEN BY THIS COURT'S DECISIONS IN *NEW YORK TIMES CO. V. SULLIVAN, ROSENBLATT V. BAER*, AND *GERTZ V. ROBERT WELCH, INC.*	15
III. CERTIORARI SHOULD BE GRANTED TO RESOLVE THE CONFLICT BETWEEN THE DECISION BELOW AND THE DECISIONS OF OTHER FEDERAL AND STATE COURTS	21

Index to Appendices

Appendix A.	Opinion of the Court of Appeal of the State of California	1a
Appendix B.	Order Denying Review After Judgment by Court of Appeal	1b
Appendix C.	Remittitur in the Court of Appeal of the State of California	1c
Appendix D.	Pertinent California Constitution, Art. IV and Statutes Involved	1d

TABLE OF AUTHORITIES

Cases

Page

Bararich v. Rodeghero, 24 Ill.App.3d 889, 321 N.E.2d 739 (1974) 23

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975) 9, 10, 11, 12, 13, 14, 15

Doctors Convalescent Center v. East Shore Newspapers, Inc., 104 Ill.App.2d 271, 244 N.E.2d 373 (1968) 21

Flores v. Los Angeles Turf Club, 55 Cal.2d 736, 13 Cal.Rptr. 201, 361 P.2d 921 (1961) 6, 7

Foster v. Laredo Newspapers, Inc., 541 S.W.2d 80 (Tex. 1976), *cert. denied*, 429 U.S. 1123 (1977) 24, 25

Franklin v. Benevolent Etc. Order of Elks, 97 Cal.App.3d 915, 159 Cal.Rptr. 131 (1979) 23

Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974) ... .15, 17, 18

Green v. Northern Publ. Co., Inc., 655 P.2d 736 (Alaska 1982) 19, 22

Grzelak v. Calamut Publ. Co., Inc., 543 F.2d 579 (7th Cir. 1975) 25

Hodges v. Oklahoma Journal, 617 P.2d 191 (Okla. 1980) 21, 22

Hutchinson v. Proxmire, 443 U.S. 111 (1979) 18, 22

Johnston v. Corinthian Television Corp., 583 P.2d 1101 (Okla. 1978) 23

New York Times Co. v. Sullivan, 376 U.S. 254 (1964) 15, 16, 17

Nodar v. Galbreath, 462 So.2d 803 (Fla. 1984) 23

Table of Authorities

Cases

Page

North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc., 414 U.S. 156 (1973) 9

People v. Shuey, 13 Cal.3d 835, 120 Cal.Rptr. 83 (1975) 10

Richmond Newspapers, Inc. v. Lipscomb, 362 S.E. 2d 32 (Va. 1987), *cert. denied*, ____ U.S. ____, 100 L.Ed.2d 228, 108 S.Ct. 1992 (1988) 23

Roche v. Egan, 433 A.2d 757 (Me. 1981) 9

Rosenblatt v. Baer, 383 U.S. 75 (1966) 2, 15, 16, 17, 18, 20, 21

Sandstrom v. Cal. Horse Racing Board, 31 Cal.2d 401, 189 P.2d 17, *cert. denied*, 335 U.S. 814 (1948) ... 7

Sewell v. Brookbank, 119 Ariz. 422, 581 P.2d 267 (Ct. App. 1978) 23

Steere v. Cupp, 226 Kan. 566, 602 P.2d 1267 (1979) 24

Tague v. Citizens for Law & Order, Inc., 75 Cal. App.3d Supp. 16, 142 Cal.Rptr. 689 (1977) 24

Turnley v. W.T.A.X., Inc., 94 Ill.App.2d 377, 236 N.E.2d 778 (1968) 24

True v. Ladner, 513 A.2d 257 (Me. 1986) 23

Weingarten v. Block, 102 Cal.App.3d 129, 162 Cal.Rptr. 701, *cert. denied*, 449 U.S. 899 (1980) .. 24

West v. Atkins, ____ U.S. ____, 101 L.Ed.2d 40, 108 S.Ct. 2250 (1988) 19

Wilkinson v. Florida Adult Care Ass'n, Inc., 450 So. 2d 1168 (Fla. Ct. App. 1984) 25

Zeck v. Spiro, 52 Misc. 2d 629, 276 N.Y.S.2d 395 (N.Y. Sup. 1966) 24

Table of Authorities

Constitutions

	Page
California Constitution, art. IV, § 19(b)	4, 5
United States Constitution, First Amendment	i, 4, 10, 11, 14, 15

Miscellaneous

Annotation, Libel and Slander: Toho is a Public Official or Otherwise With the Federal Constitutional Rule Requiring Public Officials to Show Actual Malice (1968) 19 A.L.R. 1361, § 5(c), pp. 1373-1375; *id.* (1987 pocket supp.) pp. 136-142.

California Statistical Abstract (1987) 6

Rules

Rules of United States Supreme Court, Rule 28.1 .. i

Statutes

4 California Administrative Code §§ 1400 *et seq.* ... 4

4 California Administrative Code §§ 1430 *et seq.* ... 6

4 California Administrative Code § 1437 6

4 California Administrative Code § 1467 6

4 California Administrative Code § 1470 6

4 California Administrative Code § 1481 6

4 California Administrative Code § 1481(b)(6) 8

TABLE OF AUTHORITIES CITED

STATUTES

	Page
4 California Administrative Code § 1924	6
4 California Administrative Code § 1981	6
California Business & Professions Code §§ 19400 *et seq.*	4
California Business & Professions Code § 19401	4
California Business & Professions Code § 19401(a)	4, 6
California Business & Professions Code § 19401(c)	6
California Business & Professions Code § 19414.5	4, 6
California Business & Professions Code § 19420	4, 6
California Business & Professions Code §§ 19480 *et seq.*	6
California Penal Code § 337(a)	4, 5
28 U.S.C. § 1257(a)	3, 9, 10, 12
42 U.S.C. § 1983	19

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1988

MCCLATCHY NEWSPAPERS, INC., FRANK MCCULLOCH, DENNY WALSH, JERRY BIER, AND JAMES MCCLUNG,
Petitioners,

VS.

PAUL MOSESIAN,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FIFTH APPELLATE DISTRICT

Petitioners McClatchy Newspapers, Inc., Frank McCulloch, Denny Walsh, Jerry Bier, and James McClung[1] respectfully request that a writ of certiorari issue to review the final judgment of the California Court of Appeal, Fifth Appellate District ("Court of Appeal"), entered in this case on October 26, 1988.

The question presented merits review because this Court has never established a comprehensive, workable test for determining whether a particular plaintiff in a libel action is a "public official," who is required to prove

[1]McClatchy Newspapers, Inc. publishes The Fresno Bee. Frank McCulloch is a former editor for McClatchy Newspapers, Inc. Denny Walsh, Jerry Bier, and James McClung are all reporters for McClatchy Newspapers, Inc.

actual malice to recover damages. Although it is clear that high-level government officials are "public officials," this Court has not decided how far down the ladder of authority the "public official" designation applies. As a result, state and federal courts facing this question have reached and will continue to reach inconsistent and irreconcilable results. See part III, *infra*. Such conflict inevitably results in a "chilling effect" upon reporting, because editors cannot predict with any certainty whether their publications will be protected by the actual malice rule.

Furthermore, the test adopted by the Court of Appeal for determining public official status is more restrictive than any test previously articulated by any court. First, it holds that only public employees can be "public officials." Second, it transforms every factor considered by other decisions into absolute requirements — each of which must be met before a plaintiff will be found to be a public official. These holdings constitute a direct deterrent to speech reporting on public issues. The resolution of the question presented by this case is therefore of great importance to both the public and the media, because of its certain impact on reporting about "public issues" and "about those persons who are in a position to significantly influence the resolution of those issues." *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966).

OPINIONS BELOW

The only portion of the Court of Appeal's opinion that was reported concerns the public official issue and is reported at 205 Cal.App.3d 597, 252 Cal.Rptr. 586 (1988)

The entire decision is reprinted in App. A., at 1a-25a.[2] The February 1, 1989 order of the Supreme Court of California denying petitioners' Petition For Review is unreported and is reprinted in App. B, at 1b. The February 3, 1989, judgment of the Court of Appeal, known as a Remittitur, is unreported and is reprinted in App. C, at 1c.

JURISDICTION

This case presents a substantial federal question not yet answered by this Court, regarding the appropriate test for determining whether an individual is a "public official." This question is a recurring one which, due to the lack of adequate guidance from this Court, has received conflicting answers from federal and state courts, as well as from the highest state courts.

This Court has jurisdiction to review the decision of the Court of Appeal under 28 U.S.C. § 1257(a). As will be addressed more fully in part I, *infra*, the decision of the Court of Appeal is final for the purposes of Section 1257(a) because it finally decides that plaintiff/respondent Paul Mosesian is not a "public official," because it appears that this decision is not subject to further review in the state courts, and because failure to resolve promptly the federal questions presented here will prolong the uncertainty caused by the Court of Appeal's decision and thus seriously discourage reporting about public officials.

---

[2]The unreported portion of the Court of Appeal's opinion held that petitioners did not act with actual malice. It was not certified for publication.

CONSTITUTIONAL PROVISIONS INVOLVED

1. The First Amendment to the Constitution provides, in pertinent part, that:

> Congress shall make no law . . . abridging the freedom of speech, or of the press . . . .

2. California Constitution art. IV, § 19(b), California Business & Professions Code §§ 19401, 19414.5 and 19420; California Penal Code § 337(a); and 4 California Administrative Code §§ 1400 *et seq.* are quite lengthy and are therefore set forth in full in App. D, *infra*, at 1d. These provisions set forth the authority under which and regulations by which legalized horse racing is conducted in California.

STATEMENT OF THE CASE

Respondent Paul Mosesian ("Mosesian") is the plaintiff in a libel action filed in 1981 against petitioners. The lawsuit stems from four articles and one editorial published in late 1980 and early 1981 in The Fresno Bee, all of which related to Mosesian's application to the California State Horse Racing Board, to renew his company's license to conduct public horse races.

The articles and editorial criticized the Board's investigation into Mosesian's qualifications, which had resulted in the Board granting a license to Mosesian and his company to conduct a horse race without adequate consideration of the adverse information about Mosesian contained in various government records. This included information in state intelligence files that Mosesian had once offered to help a California Department of Justice informant set up an illegal gambling operation; that Mosesian had a relationship with two underworld figures that appeared to go well beyond the attorney-client rela-

tionship; and that Mosesian had been officially reprimanded by the California Supreme Court for lying under oath in a civil lawsuit. The second article reported on a press conference held by Mosesian at which he vigorously contested the allegations contained in the first article.

Mosesian was, at the time of the publications in question, an individual with a history of having participated or having sought to participate in governmental affairs. In the late 1960's, Mosesian was a candidate for public office, namely, the Fresno Unified School Board. His campaign received extensive publicity. Mosesian also ran for and was elected to the Fresno Democratic Central Committee, and served for several years in that capacity. Moreover, by his own description in his application to the Horse Racing Board in 1979, Mosesian was "thoroughly familiar with the Fresno community and all of the politics involved therein" and "has for years been very active in local politics."

In 1980, Mosesian had conducted public horse races pursuant to authorization from and under the control of a state agency, the California Horse Racing Board. At the end of 1980 and in early 1981, when the articles in question were published, he was again seeking government approval to conduct the same activities in 1981.

As in other states, horse racing in California is a unique industry. It exists only because of an express provision of the state constitution (and would otherwise be illegal pursuant to Cal. Penal Code § 337(a)). It is subject to stringent government regulation because of the significant government revenues involved and the risks of organized criminal activity. The conduct of horse races involves the exercise of governmental power expressly delegated to the State Legislature. Cal. Const. art. IV, § 19(b). In turn, the State Legislature created the Cali-

fornia Horse Racing Board and delegated its authority in this area to the Board. Calif. Bus. & Prof. Code § 19420.[3] The Board, in turn, is responsible for licensing and delegating authority to race associations to organize and administer horse races. Calif. Bus. & Prof. Code § 19414.5 and §§ 19480 *et seq.*; 4 Admin. Code §§ 1430 *et seq.* The purposes of this legislative and regulatory framework include "[a]ssuring protection of the public," and "[g]enerating public revenues." Calif. Bus. & Prof. Code § 19401(a) & (c)(1977).

A race association licensed by the Board therefore is, in effect, the Board's surrogate "agency" for purposes of operating races. As such, the association is given a very substantial amount of the state's authority with regard to the conduct of races, including setting prices for the public's admission, programs, and parking; accepting wagers on races; distributing purses; paying expenses; accounting for profits; paying the state its share of the purses; and carefully policing participation in the legalized gambling permitted at the races to ensure that they remain free from corruption and the influence of organized crime. (*See, e.g.*, 4 Admin. Code §§ 1437, 1467, 1470, 1924, 1981.)

The impact of these state-operated horse races on the state's revenues is substantial. In 1987-88, the license fees alone generated over $140 million in state revenues. Calif. Statistical Abstract at 203 (1987). This flow of revenue to the state treasury, under the express constitutional reser-

---

[3]This delegation of authority has been recognized by the California Supreme Court. *See, e.g., Flores v. Los Angeles Turf Club*, 55 Cal.2d 736, 741, 13 Cal.Rptr. 201, 361 P.2d 921 (1961) ("it is no longer open to question that the Legislature . . . [has], in the exercise of the state's conceded police power to regulate race tracks, validly delegated plenary rulemaking power to the racing board").

vation of authority to the Legislature to provide for the conduct of horseracing, establishes that horseracing in California is state sponsored and controlled.[4]

Mosesian was directly and intimately involved in carrying out this state function. At the time of the publications in question, he was the president, one of only three corporate directors, general counsel, and fifty percent owner[5] of Equestra Corporation, dba Calfax Racing Association. In 1979, Calfax Racing Association sought and was selected by the Board to conduct the Fresno Spring Meet, a series of horse races, in 1980. The bid was signed by Paul Mosesian, as president of Equestra Corporation dba Calfax Racing Association. At the time the subject articles were published, Calfax was seeking to be selected to conduct the 1981 Fresno Spring Meet.

Mosesian's active role in Calfax was made clear in its 1980 application, which promised that he, along with the other two directors, would take "an active part in the

---

[4]In fact, cases which discuss the regulatory scheme for horse racing in California have emphasized the substantial state control over this activity, which is delegated to the California Horse Racing Board and through it to its licensees. *See, e.g., Flores, supra,* 55 Cal.2d at 746 ("the Legislature has enacted a comprehensive scheme of legislation designed to regulate almost every aspect of legalized horse racing and wagering"); *Sandstrom v. Cal. Horse Racing Board,* 31 Cal.2d 401, 404, 189 P.2d 17, *cert. denied,* 335 U.S. 814 (1948) ("supervision over horse races upon the results of which wagering is permitted is vested in the California Horse Racing Board").

[5]Initially, there were two other shareholders: respondent's brother, Charles Mosesian, and Larry Rocker. They each owned one-third of Equestra and were the only other directors and officers of Equestra. In December 1980, while petitioners were still publishing the articles in question, respondent and his brother became the sole owners of Equestra, each owning one-half of it.

operation." Mosesian's resume, which was attached to the license application, further explained that, "[a]s president of Equestra Corporation (Calfax Racing Association), Mr. Paul Mosesian *would be in charge of securing all significant personnel* including operations manager, racing director and mutuals manager" (emphasis added). Moreover, Mosesian was authorized to sign and did sign checks on behalf of the racing association, and therefore clearly administered public monies. Indeed, the first article at issue here reported on Mosesian's dispute with the state over the payment of expenses owed in connection with the 1980 meet.

Finally, Mosesian was himself the holder of a separate license issued by the California Horse Racing Board to serve as the General Manager of the Fresno Spring Meet. This position, "manager of race association," requires payment of a separate licensing fee. 4 Admin. Code § 1481(b)(6). Mosesian's own description of himself as "General Manager" of the Meet and the requirement that he obtain a separate license for this position, demonstrate his key personal role in the Meet. Thus, Mosesian had substantial responsibility for and control over the conduct of the horse races, as the delegate of the California Horse Racing Board's authority.

The trial court, after reviewing the undisputed facts in the record, properly concluded that Mosesian was a "public official," and therefore was required to demonstrate actual malice to recover any damages in this libel action. Because the trial court also concluded that there had been no showing of actual malice, judgment was entered in favor of petitioners.

On appeal, the Court of Appeal reversed the holding that Mosesian was a public official, App. A, at 19a,[6] and affirmed the trial court's determination that no showing of actual malice had been made, App. A, at 25a. Thus, a holding by this Court that plaintiff is a public official will end this case.

Petitioners' timely Petition for Review was denied by the Supreme Court of California on February 1, 1989. App. B, at 1b. Petitioners thereafter sought an order from the Court of Appeal staying issuance of that Court's remittitur, which was denied on February 3, 1989.

REASONS FOR GRANTING THE WRIT

I. THE COURT OF APPEAL'S DECISION IS FINAL UNDER 28 U.S.C. § 1257(a).

This Court has consistently held that the fact that further proceedings in a state court are anticipated does not render a state judgment "nonfinal or unappealable" within the meaning of 28 U.S.C. § 1257(a). *See, e.g., North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc.*, 414 U.S. 156, 161 (1973) *and cases cited.* In *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), this Court set forth four specific circumstances under which a state court decision could be reviewed as a "final judg-

---

[6]The Court of Appeal left open the question of whether Mosesian was a "public figure." (App. A, at 19a-20a.) However, the doctrines of "public official" and "public figure" plaintiffs are not coextensive. Individuals who have consistently been determined to be "public officials," such as police officers (*see, e.g., Roche v. Egan*, 433 A.2d 757, 762 (Me. 1981)), ordinarily are not "public figures." Consequently, the fact that the "public figure" issue has not been resolved does not affect this Court's power to review the "public official" issue present here.

ment or decree" pursuant to 28 U.S.C. § 1257(a), even though further proceedings in the state court were to take place. At least two of those circumstances are directly applicable here.

> In the third category are those situations where the federal claim has been finally decided, with further proceedings on the merits in the state courts to come, but in which later review of the federal issue cannot be had, whatever the ultimate outcome of the case . . . .

420 U.S. at 481.

Here, the Court of Appeal has remanded this case for trial, so that petitioners face potentially substantial civil liability for reporting information about a public official, even though petitioners acted without the requisite degree of fault, actual malice, under the First Amendment. The Supreme Court of California has denied review. App. B, at 1b. Under these circumstances, the Court of Appeal's ruling is the "law of the case," so review on appeal after a trial is highly improbable, without an intervening change in the law. *See, e.g., People v. Shuey*, 13 Cal.3d 835, 120 Cal.Rptr. 83 (1975) (on appeal from a final verdict, the California Supreme Court ordinarily will not inquire into the merits of earlier appellate decisions, even if such decisions are viewed as incorrect). Thus, the Court of Appeal's decision is final under 28 U.S.C. §1257(a) because no further state court review is realistically possible regarding whether Mosesian is a "public official."[7]

---

[7]Furthermore, the fact that the Court of Appeal's decision denied petitioners' summary judgment motion, and that there has not been a trial of this matter, do not preclude a finding of finality. Here, the relief sought was a judgment that Mosesian's public official status

Second, this Court held in *Cox* that review of a state court decision was also permissible, even though there had not yet been a trial, where

> reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action rather than merely controlling the nature and character of, or determining the admissibility of evidence in, the state proceedings still to come. In these circumstances, if a refusal immediately to review the state court decision might seriously erode federal policy, the Court has entertained and decided the federal issue . . . .

420 U.S. at 482-83.

In *Cox*, the Supreme Court of Georgia had rendered a decision in an interlocutory appeal under which the plaintiff could proceed to trial for invasion of privacy based on publication of the name of his daughter, the victim of a rape and murder. *Id.* at 472-75. That court initially held that a Georgia statute making it a misdemeanor to publish the name of a rape victim did *not* create a civil cause of action for invasion of privacy, *id.* at 474, but on rehearing it upheld the constitutionality of the statute and relied on the statute as establishing the public policy of Georgia that the name of a rape victim was not a matter of legitimate public concern, *id.* at 475. That court then held that the First Amendment did not protect the publication and that the broadcaster's motion for summary judgment, brought on the ground that the victim's

---

coupled with no actual malice immunized petitioners' publications, so that they should not be subjected to a trial. Petitioners' attempt to have Mosesian held to be a "public official" has been finally denied by the California courts.

name was a matter of legitimate public concern, was properly denied. *Id.*

This Court held that the Georgia judgment was "final" within the meaning of Section 1257(a):

> The [state court's] judgment is plainly final on the federal issue and is not subject to further review in the state courts. Appellants will be liable for damages if the elements of the state cause of action are proved. They may prevail at trial on nonfederal grounds, it is true, but if the Georgia court erroneously upheld the statute, there should be no trial at all. Moreover, even if appellants prevailed at trial and made unnecessary further consideration of the constitutional question, there would remain in effect the unreviewed decision of the State Supreme Court that a civil action for publishing the name of a rape victim disclosed in a public judicial proceeding may go forward despite the First and Fourteenth Amendments. Delaying final decision of the First Amendment claim until after trial will "leave unanswered . . . an important question of freedom of the press under the First Amendment," "an uneasy and unsettled constitutional posture [that] could only harm the operation of a free press." . . . On the other hand, if we now hold that the First and Fourteenth Amendments bar civil liability for broadcasting the victim's name, this litigation ends . . . .

420 U.S. at 485-86. Here, as in *Cox*:

— the state court judgment is final;

— petitioners "may prevail at trial . . . but if the [California] court erroneously upheld [Mosesian's argument that he is not a public official], there should be no trial at all";

— "even if [petitioners] prevailed at trial, there would remain in effect the unreviewed decision" of the California court, that this "civil action for [libel] may go forward despite the First and Fourteenth Amendments";

— "Delaying final decision of the First Amendment claim until after trial will 'leave unanswered . . . an important question of freedom of the press under the First Amendment,' 'an uneasy and unsettled constitutional posture [that] could only harm the operation of a free press' . . . ."

Thus, *Cox* is directly applicable here. As this Court stated in *Cox*:

> Given these factors — that the litigation could be terminated by our decision on the merits and that a failure to decide the question now will leave the press in Georgia operating in the shadow of the civil and criminal sanctions of a rule of law and a statute the constitutionality of which is in serious doubt — we find that reaching the merits is consistent with the pragmatic approach that we have followed in the past in determining finality.

420 U.S. at 486 (citations and footnote omitted).

Here, as in *Cox*, this litigation terminates if this Court holds that Mosesian is a public official, because the court below held that petitioners did not publish their articles with actual malice.

Moreover, the Court of Appeal's decision adopts the most restrictive test ever set forth by any court for determining whether a plaintiff is a public official, requiring that every factor even *considered* by other courts in making this determination must be shown to exist before a defendant sued in California can obtain a ruling that

the plaintiff is a public official. App. A, at 15a-16a. For whatever period of time the unreviewed decision of the Court of Appeal remains the law, it will, no less than did the decision reviewed in *Cox*, discourage reporters and editors from reporting on important issues involving public officials.

Failure to resolve promptly the federal question raised in this Petition, which is the subject of numerous conflicting decisions among federal and state courts, will leave the media in California and elsewhere operating in the shadow of uncertainty created by the potential for civil liability when they report important information concerning the conduct and qualifications of public officials.

Under the Court of Appeal's stringent test for determining the plaintiff's status as a "public official," the media in California will be deprived of the protection offered by the constitutional actual malice rule when reporting information concerning many individuals who wield substantial power to influence the outcome of public affairs. This result unconstitutionally diminishes the "breathing space" required for exercising First Amendment freedoms both because it allows punishment to be imposed for publication of information on public issues and because it encourages self-censorship by the media. The result therefore "seriously erode[s] federal policy," *Cox*, 420 U.S. at 483, and renders the decision below final.[8]

---

[8]Thus, even though the issue of whether Mosesian is a "public figure" remains to be determined, the question presented here is still final under *Cox*, both because the decision on Mosesian's status as a "public official" appears to be the law of the case, and because, absent intervention by this Court, the Court of Appeal's decision will remain in effect, resulting in "an uneasy and unsettled constitutional posture

II. CERTIORARI SHOULD BE GRANTED TO RESOLVE AN IMPORTANT AND RECURRING CONSTITUTIONAL QUESTION LEFT OPEN BY THIS COURT'S DECISIONS IN *NEW YORK TIMES CO. V. SULLIVAN*, *ROSENBLATT V. BAER*, AND *GERTZ V. ROBERT WELCH, INC.*

This Court has rendered opinions which dealt with the requirement that "public officials" demonstrate actual malice before they may recover damages in a defamation action. *See, e.g., New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); *Rosenblatt v. Baer*, 383 U.S. 75 (1966); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). However, no decision of this Court has addressed the issue of whether a libel plaintiff, who is not on the government payroll but who exercises significant government authority, may be a "public official." What guidance the Court has provided as to who is a "public official" has been so sparse that the lower courts have become quite confused about the scope of the "public official" designation.

For example, in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), this Court held that the First Amendment prohibits a public official from recovering damages in a defamation action absent a showing that the statement was made with actual malice. *Id.* at 279-80. This decision was made

> . . . against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.

[that] could ony harm the operation of a free press." *Cox*, 420 U.S. at 486.

Id. at 270. In *New York Times*, however, the status of the plaintiff — an elected City Commissioner — as a public official was not in doubt. Consequently, this Court noted that

> We have no occasion here to determine how far down in the lower ranks of government employees the "public official" designation would extend for purposes of this rule, or otherwise to specify categories of persons who would or would not be included.

Id. at 283 n.23 (citations omitted).

Two years later, this Court decided *Rosenblatt v. Baer*, 383 U.S. 75 (1966), which presented the question of whether an article concerning the alleged mismanagement of a county ski recreation area by its appointed manager was protected by the actual malice rule established in *New York Times*. This Court began by reiterating the important public policy behind greater protections for speech concerning public officials, describing the motivating force behind the *New York Times* decision as twofold:

> There is, *first* a strong interest in debate on public issues, and *second*, a strong interest in debate about those persons who are in a position significantly to influence the resolution of those issues. Criticism of government is at the very center of the constitutionally protected area of free discussion. *Criticism of those responsible for government operations must be free, lest criticism of government itself be penalized.*

Id. at 85 (emphasis added). Consequently, this Court held that

> *It is clear, therefore, that the "public official" designation applies at the very least to those among the hierarchy of government employees who have, or ap-*

> *pear to the public to have, substantial responsibility for or control over the conduct of government affairs.*

Id. (emphasis added).

This Court then determined that the plaintiff in *Rosenblatt* could be a public official because he was viewed as the individual primarily responsible for the operation of the county recreation area. *Id.* at 87.[9] This Court did not go beyond that holding, however, to provide guidance as to the boundaries of the "public official" designation.

Several years later, in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), this Court articulated two additional factors to be considered in determining whether a libel plaintiff is a "public official." First, this Court recognized that public officials "usually enjoy significantly greater access to the channels of effective communication [than private individuals] and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy." 418 U.S. at 344. Second, the Court explained that, "an individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs. He runs the risk of closer public scrutiny than might otherwise be the case." *Id.* Consequently, this Court held that "the communications media are entitled to act on the assumption that public officials and public figures have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them." *Id.* at 345.

However, in *Gertz*, the plaintiff was held not to be a public figure. No determination was made as to whether he was a public official.

---

[9]Because *New York Times* had not been decided when *Rosenblatt* was originally tried, the Court remanded the case to the trial court for presentation of evidence on the plaintiff's status. *Id.* at 677.

Thus, although this Court has enunciated some guidelines for lower courts to follow, this Court has acknowledged that these factors do not set "precise boundaries" for determining whether particular individuals are public officials. *Hutchinson v. Proxmire*, 443 U.S. 111, 119 n.8 (1979).

In the absence of any clear test from this Court, the Court of Appeal felt it was free to fashion its own test. It combined both of the factors in *Rosenblatt* and both of the factors in *Gertz*, and then held that they *all* had to be shown before anyone could be found to be a public official. (App. A at 15a-16a.) It included in its test the additional requirement that a "condition precedent" for public official status was that the plaintiff be "someone in the government's employ." (App. A, at 16a.) Thus, the standard adopted by the Court of Appeal is far more restrictive than the test set forth by this Court or any other court. Not surprisingly, the Court of Appeal cited no authority and no rationale to support the adoption of its unprecedented test. (*Id.*)

It simply cannot be the case that the state may remove its activities from the sphere of unfettered public discussion by delegating state functions to nominally private people. For example, just because a state presently chooses to operate prisons itself does not mean that it could curtail discussion of its administration of prisons by contracting out such functions to private companies. If this were the rule, then any service performed by the government — whether involving garbage collection, highway maintenance, or operating public transportation — could be removed from the protection of the actual malice rule by simply giving a contract to a private individual. Such a result has neither authority to support it nor logic to commend it.

Indeed, in a recent case involving a claim under 42 U.S.C. § 1983 by a state prison inmate against a private physician who treated him and who worked under contract with the state, this Court held that the physician, by accepting responsibility for functions which would otherwise be performed by the state, must be considered a "state actor." As this Court explained:

> [T]he Court [has] held that the State has a constitutional obligation, under the Eighth Amendment, to provide adequate medical care to those whom it has incarcerated. . . . North Carolina employs physicians, such as respondent, and defers to their professional judgment, in order to fulfill this obligation. By virtue of this relationship, *effected by state law*, Dr. Atkins is authorized and obliged to treat prison inmates, such as [plaintiff]. *He does so "clothed with the authority of state law."* . . . .
>
> The fact that the State employed respondent pursuant to a contractual arrangement that did not generate the same benefits or obligations applicable to other "state employees" does not alter the analysis. *It is the physician's function within the state system, not the precise terms of his employment, that determines whether his actions can fairly be attributed to the State.*

West v. Atkins, ____ U.S. ____, 101 L. Ed. 2d 40, 108 S. Ct. 2250, 2258-59 (1988) (emphasis added; citations omitted). Applying the same rationale, the Alaska Supreme Court held that a private doctor performing medical services for the state was a public official, who had to prove actual malice to recover damages in a defamation action. *Green v. Northern Publ. Co., Inc.*, 655 P.2d 736, 741 (Alaska 1982).

Similarly, as authorized by the California Constitution, the California Horse Racing Board delegates its authority to administer horse races through the licensing process, thereby "clothing" licensees with the authority of state law. The precise terms of the relationship between Mosesian and the Board is not the key; rather, it is the *function* performed by the licensee — in this case, conducting horse races pursuant to and under the auspices of state law, a function which would otherwise be performed directly by a state agency, namely, the California Horse Racing Board. It is that performance of a government function that makes Mosesian a public official.

The absence of a clear test for applying the "public official" designation has resulted in decisions such as the Court of Appeal's, which ignores what guidance this Court has provided and which sets forth its own highly restrictive and unprecedented test. Review is therefore essential to establish more precise boundaries for "public official" status. These boundaries must be drawn with the aim of protecting "criticism of those responsible for government operations," which this Court has recognized as lying "at the very center of the constitutionally protected area of free discussion." *Rosenblatt*, 383 U.S. at 85.

Consequently, this Court should grant review and hold that the "public official" designation applies to anyone who exercises significant authority over government functions, even if that person is not a government employee. This rule would provide the protection needed for free discussion of public issues and of "those persons who are in a position significantly to influence the resolution of those issues." *Rosenblatt*, 383 U.S. at 85.

III. CERTIORARI SHOULD BE GRANTED TO RESOLVE THE CONFLICT BETWEEN THE DECISION BELOW AND THE DECISIONS OF OTHER FEDERAL AND STATE COURTS

In *Rosenblatt*, this Court recognized the importance of a uniform constitutional framework for protecting speech about public officials, noting that "the constitutional limits of free expression in the Nation [should not] vary with state lines." *Id.* at 84. However, as the national arbiter of federal constitutional issues, only this Court has the power to assure uniform application of constitutional standards. Review of this case is necessary so that this Court can resolve the conflict between the decision below and the decisions of other courts, concerning the correct test to be applied in deciding whether a defamation plaintiff is a "public official."

First, as the Court of Appeal itself recognized, its decision is inconsistent with the approach taken in a number of other jurisdictions: "many sister state courts have affixed the 'public official' label to all kinds of persons who have some affiliation with the government." (App. A at 12a, *citing* Annot., Libel and Slander: Who is a Public Official or Otherwise with the Federal Constitutional Rule Requiring Public Officials to Show Actual Malice (1968) 19 A.L.R. 1361, § 5(c), pp. 1373-1375; *id.* (1987 pocket supp.) pp. 136-142).)

For example, in *Doctors Convalescent Center v. East Shore Newspapers, Inc.*, 104 Ill.App.2d 271, 244 N.E.2d 373 (1968), the Illinois Court of Appeal held that a nursing home and a doctor licensed by the state department of health, in which several "wards of the state" resided, were public officials. 244 N.E.2d at 376. Similarly, in *Hodges v. Oklahoma Journal*, 617 P.2d 191 (Okla. 1980), the Oklahoma Supreme Court rejected the notion

that only traditional "government employees" can be "public officials":

> The phrase "governmental employee" as used in the test articulated in *Rosenblatt* was not intended to limit it to those individuals who have a traditional "employee-employer" relationship with a governmental unit. It extends to those who have, or appear to have, substantial responsibility for or control over the conduct of governmental affairs and the alleged libel must relate to this official capacity.

617 P.2d at 194 (emphasis added). Consequently, the court held that plaintiff, an independent contractor working as a license tag agent, was a public official. *Id.*[10] *See also Green v. Northern Publ. Co., Inc.*, 655 P.2d 736, 741 (Alaska 1982) (private doctor providing medical services at a prison was a public official). As even the Court of Appeal recognized, its opinion simply cannot be reconciled with these decisions.

Second, the inconsistencies between the Court of Appeal's decision and the decisions of other courts is simply one example of the sharp conflicts that exist

---

[10]Similarly, in *Hutchinson v. Proxmire*, 431 F. Supp. 1311, 1327 (W.D. Wis. 1977), *aff'd*, 579 F.2d 1027 (7th Cir. 1978), *rev'd on other grounds*, 443 U.S. 111 (1979), the district court held that the plaintiff, a scientist whose research was funded by various federal agencies, was both a public figure *and* a public official. With regard to the latter designation, the district court noted that the plaintiff "was dealt with as a responsible public official by the federal agencies that funded his research," and was the president of a nonprofit group "that purports to act in the public interest." *Id.* at 1327. The only issue decided by the Seventh Circuit Court of Appeal, however, was whether the plaintiff was a public figure (579 F.2d at 1035 n.14); consequently, this Court's decision dealt only with that designation. 443 U.S. at 119 n.8.

among many state and federal courts over who is a public official. As a consequence, individuals holding identical or virtually identical positions are treated differently with respect to the actual malice rule, depending on the jurisdiction in which a defamation suit is filed. Review of this case would provide the Court with an opportunity to address these conflicts by formulating guidelines for all libel cases that present this general issue.

For example, a number of jurisdictions have held that public school teachers are "public officials," who must prove constitutional actual malice to recover any damages in a defamation case. *See, e.g., Johnston v. Corinthian Television Corp.*, 583 P.2d 1101, 1103 (Okla. 1978) (grade school physical education teacher/wrestling coach is "public official"); *Bararich v. Rodeghero*, 24 Ill.App.3d 889, 321 N.E.2d 739, 742 (1974) (high school teachers and coaches are "public officials"); *Sewell v. Brookbank*, 119 Ariz. 422, 581 P.2d 267, 270 (Ct. App. 1978) (high school teacher is a "public official"). Yet courts in other jurisdictions have held that teachers are *not* "public officials." *See, e.g., Franklin v. Benevolent Etc. Order of Elks*, 97 Cal.App.3d 915, 923-24, 159 Cal.Rptr. 131 (1979) (high school teacher is not a "public official"); *True v. Ladner*, 513 A.2d 257, 264 (Me. 1986) (same); *Nodar v. Galbreath*, 462 So.2d 803, 809 (Fla. 1984) (same); *Richmond Newspapers, Inc. v. Lipscomb*, 362 S.E.2d 32, 37 (Va. 1987), *cert. denied*, ____ U.S. ____, 100 L.Ed.2d 228, 108 S.Ct. 1992 (1988) (same).

Contradictory results have also been reached with a wide variety of plaintiffs, even where the distinctions between the positions held are impossible to discern. For example:

— A California court held that an assistant public defender was a "public official," because he was

charged "by state law" with representing persons assigned to him, he was paid by the state, he was involved in a matter (crime) which was of great public importance, and he had discretion over the conduct of the defense. *Tague v. Citizens for Law & Order, Inc.*, 75 Cal.App.3d Supp. 16, 23-24, 142 Cal.Rptr. 689 (1977). However, the Kansas Supreme Court held that an attorney appointed by the court to defend a murderer, who was paid by the state for his services, was not a "public official" for purposes of discussion about his conduct of the case. *Steere v. Cupp*, 226 Kan. 566, 602 P.2d 1267, 1272 (1979).

— An attorney who served as counsel for a city redevelopment agency and had previously served as the city attorney was held to be a "public official" (*Weingarten v. Block*, 102 Cal.App.3d 129, 139, 162 Cal.Rptr. 701, *cert. denied*, 449 U.S. 899 (1980)), while the counsel for a city sewer district were held *not* to be "public officials" (*Zeck v. Spiro*, 52 Misc. 2d 629, 276 N.Y.S.2d 395, 397-8 (N.Y. Sup. 1966)).

— An architect hired to work on public buildings was found to be a "public official," because he was "in a position to significantly influence the construction and furnishings of a public building provided through public funds" (*Turnely v. W.T.A.X., Inc.*, 94 Ill.App.2d 377, 236 N.E.2d 778, 781 (1968)), while a civil engineer hired by the city as a consultant on major reclamation projects was found *not* to be a "public official," even though he exercised significant "influence" over public construction projects paid for by public funds (*Foster v. Laredo Newspapers, Inc.*, 541

S.W.2d 809, 813 (Tex. 1976), *cert. denied*, 429 U.S. 1123 (1977)).

— The coordinator of state-licensed adult living centers, employed by the Department of Health and Rehabilitation, was held *not* to be a "public official" because she did not have sufficient "control" over the conduct of government affairs (*Wilkinson v. Florida Adult Care Ass'n, Inc.*, 450 So.2d 1168 (Fla. Ct. App. 1984)); however, a secretary employed by the Public Works Department was found to be a "public official," even though she apparently exercised no control whatsoever over the conduct of government affairs, because she was viewed as a "political patronage" employee (*Grzelak v. Calamut Publ. Co., Inc.*, 543 F.2d 579, 582-3 (7th Cir. 1975)).

The cause of all this confusion and contradiction is that no clear guidelines for determining "public official" status have been articulated by this Court. Only this Court, by granting review in this case, can eliminate the confusion in the lower courts concerning the appropriate test to be applied in determining whether a defamation plaintiff is a "public official."

DATED: March 3, 1989.

Respectfully submitted,

Of counsel:

KELLI L. SAGER
KAREN N. FREDERIKSEN
GIBSON, DUNN & CRUTCHER
333 South Grand Avenue
Los Angeles, California 90071
(213) 229-7000

THOMAS E. KOTOSKE
540 University Avenue
Palo Alto, California 94301
(415) 326-5575

ROBERT S. WARREN
*REX S. HEINKE
GIBSON, DUNN & CRUTCHER
333 South Grand Avenue
Los Angeles, California 90071
(213) 229-7000

LARRY L. SIMMS
GIBSON, DUNN & CRUTCHER
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

Attorneys for Petitioners
**Counsel of Record*

APPENDIX A

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

PAUL MOSESIAN,
Plaintiff and Appellant,
v.
MCCLATCHY NEWSPAPERS et al.,
Defendants and Respondents.

F008696
(Super. Ct. No. 274889-5)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Nickolas Dibiaso, Judge.

Nuttall, Berman & Magill and Roger T. Nuttall for Plaintiff and Appellant.

Diepenbrock, Wulff, Plant & Hannegan, William Shubb and Charity Kenyon for Defendants and Respondents.

* * *

This appeal follows orders granting summary adjudication and summary judgment in favor of defendants in a defamation action. The trial court first ruled plaintiff was a public official and candidate for public office at the time of the publications. Later, on the summary judgment motion, the court determined plaintiff's evidence was of

---

*Pursuant to California Rules of Court, rule 976.1, this opinion is certified for publication with the exception of part II.

insufficient caliber or quantity to allow a rational finder of fact to find actual malice by clear and convincing evidence, thereby establishing a defense under *New York Times v. Sullivan* (1964) 376 U.S. 254. Plaintiff challenges both orders. On review, we conclude the court erred by granting summary adjudication on the issue of "public official." However, we also find the court properly found no triable issue of fact on actual malice, a question which may be of importance on remand.

Plaintiff Paul Mosesian sued defendants McClatchy Newspapers, Frank McCulloch (an executive editor with McClatchy Newspapers), and three Fresno Bee reporters for defamation based upon a number of articles and an editorial published in the Fresno Bee in 1980 and 1981. The first article reported the California Horse Racing Board (CHRB) had done an inadequate job of investigating the Calfax Racing Association, and specifically plaintiff, who had an interest in the association, before issuing the association a license to conduct the 1980 spring horse race meet at the Fresno County Fairgrounds. The piece disclosed allegedly unfavorable information concerning plaintiff which the defendant investigative reporters had uncovered, the inference being CHRB would not have granted the license had they been aware of the information. It also noted Calfax had applied for a license to conduct a similar 1981 meet.

Defendants repeated the challenged material in reporting plaintiff's and the CHRB's responses to the first article. An editorial which called for more thorough investigations by the CHRB also referred to the earlier information reported about plaintiff. Those charges are not repeated here as they are not necessarily germane to the disposition of this case.

Several years into the case, defendants moved for summary adjudication of issues. In relevant part they argued plaintiff was a "public official" and candidate for "public office" by virtue of: (1) his interest in Equestra Corporation and its subsidiary, Calfax Racing Association; and (2) the subsidiary's 1980 horse race association license and its application for a 1981 license.

In granting the motion, the trial court reasoned horse racing is a public concern.

> "It follows, then, that a racing association licensed by the state to conduct a meet carries out a public function when it does so, and that the plaintiff, as the president, a director, and a significant shareholder in a licensee (Equestra), was a 'public official' with respect to the association's activities pursuant to its license. Surely he was no less a public official than the person hired by the county to manage the ski area involved in *Rosenblatt.* [*Rosenblatt v. Baer* (1966) 383 U.S. 75.] . . .
>
> ". . . . . .
>
> "Moreover, because candidates for public office fall within the purview of *Rosenblatt* no less than those who actually occupy 'public offices,' [*Kapellas v. Kofman* (1969) 1 Cal.3d 20, 36; *St. Amant v. Thompson* (1968) 390 U.S. 727.], the defendants' motion must also be granted with respect to plaintiff's position as president, a director and a significant shareholder of the corporation that applied for a license to conduct the 1981 spring meet."

Defendants then sought summary judgment on the theory they did not know any statement in the articles was false nor did they entertain any doubt that any such statement was true. Again the trial court agreed with

defendants by finding: "[T]he evidence submitted by the plaintiff in opposition to the motion is 'of insufficient caliber or quantity to allow a rational finder of fact to find actual malice by clear and convincing evidence' (*Anderson*, at 215 [*Anderson* v. *Liberty Lobby, Inc.* (1986) 477 U.S. 242]," Plaintiff appealed.

DISCUSSION

BACKGROUND

In *New York Times v. Sullivan, supra*, 376 U.S. 254, 279-280, the United States Supreme Court held a public official was not entitled to damages for defamation relating to his or her public office unless the official could prove the statement was made with "actual malice," that is, with knowledge of its falsity or with reckless disregard of whether it was true or false. The court had no occasion in *New York Times* to determine how far down into the lower rank of government employees the "public official" designation would extend or to specify categories of persons who would or would not be included. The respondent was an elected city commissioner and there was no question but that he was a "public official." (*Id.* at p. 283, fn. 23.)

Subsequently, a plurality in *Rosenblatt v. Baer* (1966) 383 U.S. 75, 85-86, suggested the "public official" designation applied

> "at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of government affairs.
>
> ". . . Where a position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the

person who holds it, beyond the general public interest in the qualifications and performance of all government employees, both elements we identified in *New York Times* are present and the *New York Times* malice standards apply." (*Ibid.*, fns. omitted.)

The *New York Times* privilege has since been extended to publishers of allegedly defamatory falsehood concerning "public figures." "Public figures" are those who command sufficient continuing public interest by their position or their purposeful activity amounting to a thrusting of their personality into the "vortex" of an important public controversy *and* have a realistic opportunity to counteract false statements. (*Curtis Publishing Co. v. Butts* (1967) 388 U.S. 130, 154-155.)

I. "PUBLIC OFFICIAL"[1]

A. Plaintiff's Argument.

In his opening brief, plaintiff argued there was a triable issue of fact regarding whether he was a *"public official for all purposes."* (Emphasis added.) There is no such legal concept. Plaintiff has confused the term "public official" with "public figure." The law recognizes a distinction between "public figures" who "occupy positions of such persuasive power and influence that they are deemed public figures for all purposes" (*Gertz v. Robert*

---

[1] This court requested supplemental briefing concerning whether defendants could obtain summary relief on the theory plaintiff was a "public official and candidate for public office" when defendants pled as an affirmative defense plaintiff was a "public figure," but did not plead he was a "public official" or candidate for public office. Plaintiff conceded this question at oral argument, asking us to decide his appeal on the substantive issues rather than a procedural point. Accordingly, we do not address whether defendants could obtain summary relief on a theory not pled.

Welch (1974) 418 U.S. 323, 345), and those who are "public figures" in the limited sense that they have voluntarily injected themselves into the resolution of particular public controversies or attempted to influence public opinion regarding a cause. (*Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 254.) Thus, the "public figure for all purposes" and the "limited public figure" labels exist in the case law. However, defendants here sought and obtained summary adjudication solely on grounds plaintiff was a "public official and candidate for public office." The "public figure" cases are accordingly irrelevant to these circumstances, as is plaintiff's claim that he was not a "public official for all purposes."

Plaintiff also argues a horse racing board licensee is not a "public official." He observes there are no cases which explicitly hold a governmental licensee is necessarily a "public official." Given that observation, he relies upon *Franklin v. Benevolent Etc. Order of Elks* (1979) 97 Cal.App.3d 915.

The *Franklin* court held, in relevant part, a school teacher was not a "public official." (*Id.* at pp. 924-925.) While a public high school teacher might occupy a position inviting public scrutiny and discussion, the *Franklin* court reasoned:

> "Implicit in the reasoning of *New York Times* and of *Rosenblatt* is the concept of a freedom of the *governed* to question the *governor*, of those who are influenced by the operation of government to criticize those who *control* the conduct of government. The governance or control which a public classroom teacher might be said to exercise over the conduct of government is at most remote and philosophical: Far too much so, in our view, to justify exposing each public classroom teacher to a qualifiedly privileged assault upon his or

> her reputation. In *Gertz v. Robert Welch, Inc., supra,* 418 U.S. 323, the Supreme Court points out that extension of the qualified constitutional privilege to those who comment upon public officials is to be rationalized in part by the consideration that 'An individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs.' (418 U.S. at p. 344 [41 L.Ed.2d at p. 808].) We are unwilling to hold that a school teacher must be deemed to have assumed the risk of nonmalicious defamation. We perceive in such a rule a real and intolerable danger to the freedom of intellect and of expression which the teacher must have to teach effectively." (*Franklin, supra,* 97 Cal.App.3d at p. 924.)

A public school teacher is by virtue of his or her teaching credential a governmental licensee. However, the *Franklin* court's refusal to find a "public official" status did not depend on the teacher's license.

B. Who is a "Public Official"?

To determine, as a matter of law, whether plaintiff was a public official at the time the articles were published, it is necessary to first define the term "public official." As previously noted, the Supreme Court in *New York Times v. Sullivan, supra,* 376 U.S. at page 283, footnote 23, did not define the term; the plaintiff was an elected city commissioner, a position which "clearly made him a public official." The court analogized plaintiff to a judge and noted criticism of a judge or the judge's decision may not be repressed except where there is a clear and present danger of obstruction of justice.

> "If judges are to be treated as 'men of fortitude, able to thrive in a hardy climate,' [citation] surely the

same must be true of other government officials, such as elected city commissioners." (*Id.* at p. 273, fn. omitted.)

Since *New York Times,* the Supreme Court has had little to say regarding who is a public official. In *Rosenblatt v. Baer, supra,* 383 U.S. 75, a former supervisor of a county-owned and county-operated recreation area filed a libel action based on a newspaper column which he claimed criticized his job performance. In an appeal following an award of damages, he urged two theories to support his recovery. First, the jury could award him damages if it found the column cast suspicion indiscriminately on the recreation area's former management group, regardless of whether the jury found the alleged misconduct concerned him. (*Id.* at pp. 79-80.) A majority of the court disagreed with this theory and reversed the judgment. The court observed such a theory was tantamount to a demand for recovery based on libel of government and thus constitutionally insufficient. (*Id.* at p. 83.)

Alternatively, the plaintiff argued that people who read the column would believe it referred specifically to him as the "man in charge" at the area, personally responsible for its financial affairs. By his argument, however, the plaintiff unwittingly raised the question of whether he was a "public official" and should have to show malice under the *New York Times* standard. (*Id.* at p. 83.) *New York Times* had not been decided when the plaintiff in *Rosenblatt* went to trial.

Justice Brennan, writing for a plurality on this issue, acknowledged there was no occassion in *New York Times* to specify categories of persons who would or would not be included in the "public official" designation. He went

on to describe the motivating forces behind the *New York Times* decision:

> "There is, first, a strong interest in debate on public issues, and, second, a strong interest in debate about those persons who are in a position significantly to influence the resolution of those issues. Criticism of government is at the very center of the constitutionally protected area of free discussion. Criticism of those responsible for government operations must be free, lest criticism of government itself be penalized. It is clear, therefore, that the 'public official' designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs." (*Rosenblatt, supra,* 383 U.S. 75 at p. 85, fn. omitted.)

In a concurring opinion, Justice Douglas took exception to Justice Brennan's approach:

> "[I]f free discussion of public issues is the guide, I see no way to draw lines that exclude the night watchman, the file clerk, the typist, or, for that matter, anyone on the public payroll. And how about these who contract to carry out governmental missions? Some of them are as much in the public domain as any so-called officeholder. And how about the dollar-a-year man, whose prototype was publicized in *United States v. Mississippi Valley Generating Co.,* 364 U.S. 520? And the industrialists who raise the price of a basic commodity? Are not steel and aluminum in the public domain? And the labor leader who combines trade unionism with bribery and racketeering?" (*Rosenblatt, supra,* at pp. 89-90, fn. omitted (conc. opn. of Douglas, J.).)

Justice Brennan responded:

> "Where a position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees, both elements we identified in *New York Times* are present and the *New York Times* malice standards apply[13]" (*Id.* at pp. 86-87, fn. 12 omitted.)

Footnote 13 provides:

> "It is suggested that this test might apply to a night watchman accused of stealing state secrets. But a conclusion that the *New York Times* malice standards apply could not be reached merely because a statement defamatory of some person in government employ catches the public's interest; that conclusion would virtually disregard society's interest in protecting reputation. The employee's position must be one which would invite public scrutiny and discussion of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charges in controversy." (*Id.* at pp. 86-87.)

To this spirited debate, Justice Black, with whom Justice Douglas joined, added his own thoughts:

> "And the right to criticize a public agent engaged in public activities cannot safely, and should not, depend upon whether or not that agent is arbitrarily labeled a 'public official.' Nor should the right to criticize depend upon how high a position in government a public agent may occupy. Indeed a large percentage of public moneys expended is distributed by local agents handling local funds as the respon-

> dent in this case did. To be faithful to the First Amendment's guarantees, this Court should free private critics of public agents from fear of libel judgments for money just as it has freed critics from fear of pains and penalties inflicted by government." (*Id.* at p. 95 (conc. and dis. opn. of Black, J.).)

Later, the Supreme Court in *Gertz v. Robert Welch, Inc., supra,* 418 U.S. at page 344, expanded its rationale for the *New York Times* rule in the course of holding the rule does not apply where the person defamed is a private individual. In so doing, the Court added this insight to the "public official" designation:

> "The first remedy of any victim of defamation is self-help — using available opportunities to contradict the lie or correct the error and thereby to minimize its adverse impact on reputation. Public officials and public figures usually enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy.... [¶] More important than the likelihood that private individuals will lack effective opportunities for rebuttal, there is a compelling normative consideration underlying the distinction between public and private defamation plaintiffs. An individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs. He runs the risk of closer public scrutiny than might otherwise be the case."

Beyond *Rosenblatt* and *Gertz*, state and lower federal courts have been left to grapple with the parameters of "public official." Generally, these courts have applied the reasonings of Justices Douglas and Black in *Rosenblatt.* Taking a very broad approach, many sister state courts

have affixed the "public official" label to all kinds of persons who have some affiliation with government. (For a recital of such cases, see Annot., Libel and Slander: Who is a Public Official or Otherwise with the Federal Constitutional Rule Requiring Public Officials to Show Actual Malice (1968) 19 A.L.R.3d 1361, § 5(c), pp. 1373-1375; *id.* (1987 pocket supp.) pp. 136-142.) As one observer has noted, the caveat in footnote 13 of Justice Brennan's opinion in *Rosenblatt*, that the government employee's position must invite public scrutiny, either has not been discerned or has been disregarded by lower courts. (Eaton, *The American Law of Defamation Through Gertz v. Robert Welch, Inc. and Beyond: An Analytic Primer* (1975) 61 Va.L.Rev. 1349, 1376-1378.)

Notably, there are few California decisions which have considered who is a "public official" for purposes of the *New York Times* rule. Those courts have nevertheless consistently applied Justice Brennan's analysis in *Rosenblatt, supra*, 38 U.S. at pages 85-86, to "persons who are in a position significantly to influence the resolution of [public] issues," "to those among the hierarchy of governmental employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs," and "[w]here a position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees." (*Gomes v. Fried* (1982) 136 Cal.App.3d 924, 932; *Weingarten v. Block* (1980) 102 Cal.App.3d 129, 138; *Franklin v. Benevolent etc. Order of Elks, supra*, 97 Cal.App.3d at pp. 923-924; *Tague v. Citizens for Law & Order, Inc.* (1977) 75 Cal.App.3d Supp. 16, 21-24; *Peoples v. Tautfest* (1969) 274 Cal.App.2d 630, 635-636.)

Defendants nonetheless urge a more expansive approach to the question of who is a public official, and offer two different bases for the "public official" designation. One requires only a brief discussion. The other requires some analysis. First, defendants argue California common law broadly defines "public official." The bulk of the cases cited for this proposition predate *New York Times*, or do not pertain to the *New York Times* defense. Moreover, whether plaintiff was a "public official" may not be decided by reference to state law standards. (*Rosenblatt v. Baer, supra*, 38 U.S. at p. 84.)

Second, defendants attempt to achieve the best of both worlds in their reliance on *Rosenblatt*. They quote the language from Justice Brennan's opinion regarding those who are in a position significantly to influence a resolution of public issues. Yet, they urge a definition of "public official" to include those who contract to carry out governmental missions (citing Justice Douglas's concurring opinion) and other agents responsible for distributing public funds (citing Justice Black's concurring and dissenting opinion). Thus, if a person performs a delegated public or governmental function, then, according to defendants, he or she is a "public official."

The positions of each of the *Rosenblatt* justices on the issue of "public official" are persuasive. Yet, they are not binding precedent; none of them represent the sentiments of a majority of the court. Further, the discussions pertaining to "public official" are dicta since the court reversed the judgment on other grounds. Thus, we are theoretically free to choose any of the positions espoused in *Rosenblatt*. However, to adopt either Justice Douglas's or Justice Black's approach to "public official" would be an exercise in intellectual overreaching in light of the *New York Times* rule. The "public official" designation should

not apply to an individual merely because he or she performs a public or governmental function.

The Court in *New York Times* created a privilege to defame a "public official" so long as such defamatory remarks were not made with actual malice. The motivating force behind the rule was to permit wide-open debate on public issues which might include sharp attacks on government and public officials. (*New York Times, supra*, 376 U.S., at p. 270.) Yet, as the majority in *Gertz* later explained, the *New York Times* rules has its limits. The Court perceived "public officials" as usually enjoying significantly greater access to the media. Furthermore, an individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs. He or she runs the risk of closer public scrutiny than might otherwise be the case. (*Gertz, supra*, 418 U.S. at p. 344.)

In light of these considerations, we find the views expressed by Justice Brennan in *Rosenblatt* most accurately reflect the position of the U.S. Supreme Court on the matter of who is a "public official" for purposes of the *New York Times* rule. As an aside, this result is consistent with the fact Justices Douglas and Black in *Rosenblatt* reiterated the position they had previously taken in *New York Times*. (*Rosenblatt, supra*, 383 U.S. at p. 95 (conc. and dis. opn. of Black J., joined by Douglas, J.).) In his concurring opinion in *New York Times*, Justice Black wrote:

> "I base my vote to reverse on the belief that the First and Fourteenth Amendments not merely 'delimit' a State's power to award damages to 'puble officials against critics of their official conduct' but completely prohibit a State from exercising such a power. The Court goes on to hold that a State can subject

> such critics to damages if 'actual malice' can be proved against them. 'Malice,' even as defined by the Court, is an elusive, abstract concept, hard to prove and hard to disprove. The requirement that malice be proved provides at best an evanescent protection for the right critically to discuss public affairs and certainly does not measure up to the sturdy safeguard embodied in the First Amendment. Unlike the Court, therefore, I vote to reverse exclusively on the ground that the Times and the individual defendants had an absolute, unconditional constitutional right to publish in the Times advertisement their criticisms of the Montgomery agencies and officials." (*New York Times Co., supra,* 376 U.S. 254, 293 (conc. opn of Black, J., joined by Douglas, J.).)

Thus, it would be unreasonable to apply either Justice Douglas's or Justice Black's approach, as a definition of "public official," since these approaches reflect those justices' abiding opposition to the *New York Times* rule.

We conclude the Supreme Court's vision of a "public official" is someone in the government's employ who: (1) has, or appears to the public to have, substantial responsibility for or control over the conduct of governmental affairs; (2) usually enjoys significantly greater access to the mass media and therefore a more realistic opportunity to contradict false statements than the private individual; (3) holds a position in government which has such apparent importance that the public has an independent interest in the person's qualifications and performance beyond the general public interest in the qualifications and performance of all government employees; and (4) holds a position which invites public scrutiny and discussion of the person holding it entirely apart

from the scrutiny and discussion occasioned by the particular controversy.

C. Was Plaintiff a "Public Official"?

Following the analysis offered by Justice Brennan in *Rosenblatt* and the limitations spelled out in *Gertz*, the next question is whether plaintiff at the time of the defendants' publications was a "public official." The answer must be "no." It is undisputed that plaintiff was not a government employee. Thus, the condition precedent for "public official" — someone in the government's employ — is lacking.

It should be noted defendants urge Justice Brennan would find plaintiff was a "public official" because of an inference in the *Rosenblatt* plurality opinion that the plaintiff in that case, supervisor of a county-owned and operated recreation area, was deemed a public official. Defendants misunderstand *Rosenblatt*. First, the plaintiff in *Rosenblatt* was a government employee, an important distinction missing in this case. Further, the plaintiff had characterized his role in management of the area as so prominent and important that he raised a substantial argument regarding whether he was a "public official." Still, the record left open the possibility that he could bring his claim outside the *New York Times* rule. (*Rosenblatt, supra,* 383 U.S. at p. 87.)

In the present case, defendants' primary argument for plaintiff's "public official" status is, however, based on a broad interpretation of "public official": one who performs a government function. This interpretation is consistent with Justices Douglas and Black's opinions in *Rosenblatt* and the approach taken in many sister state jurisdictions. In their summary adjudication motion, defendants here argued plaintiff was a public official and

candidate for public office by virtue of (1) his interest in Equestra Corporation and its subsidiary, Calfax Racing Association and (2) the subsidiary's 1980 horse race association license issued by the CHRB, and the subsequent application for a 1981 license. They claim the CHRB, by licensing Calfax, delegated to the association the functions of: controlling gambling, protecting the public from organized crime, and controlling and influencing the generation and collection of public revenue.

Defendants' position is faulty. Not only do they rely on an overbroad definition of "public official," their argument is based on other inaccurate assumptions.

First, *assuming* a horse racing association could be a "public official" by virtue of its license, that circumstance would not make plaintiff a "public official." Plaintiff's interest in the racing association was not as a sole proprietor. Rather, he was a 33⅓ percent shareholder and a director of the corporation whose subsidiary possessed the license. Undaunted, defendants argue plaintiff was a "public official" because he was the "main player" in the corporation. However, one's importance to a corporate enterprise is not the test for piercing the corporate veil and, in this case, treating plaintiff as the licensee. (See 3 Witkin, Summary of Cal. Law (8th ed. 1974) Corporations, § 5 et seq., pp. 4317-4328.) Further, disregard of the corporate entity was not an issue in the summary adjudication motion.

Defendants also argue plaintiff was a "public official" because he was, by his own admission in his opposition to the summary adjudication motion, licensed as the general manager of the 1980 racing meet. However, the statutory and regulatory authorities which they cite as establishing a delegation of governmental function are provisions which deal with the responsibilities of a horse racing

association, not a general manager of a horse race meet. (See Bus. & Prof. Code, § 19610 et seq.; Cal. Admin. Code, tit. 4, §§ 1433, 1436, 1445-1462, 1467, 1870, 1920, 1981.)

Further, inherent in defendant's argument is the notion that horse racing with on-track wagering is a governmental business or function. According to defendants, the government "deputizes" horse racing associations, the general manager and others through the licensing process, to perform the government's function and duties.

Yet, the fact that government requires a license to perform a job and regulates the performance of the job does not make the job a government function. For example, our state government requires attorneys to be licensed in order to practice law. That license reflects certain minimum standards of performance and obligates the licensee to perform within those standards and consistent with a code of professional responsibility. However, that does not necessarily make lawyering a governmental function or a lawyer a "public official."

Horse racing with on-track wagering is a private enterprise. Certainly it is a heavily regulated business in California (See Bus. & Prof. Code, § 19400 et seq.; Cal. Admin. Code, tit. 4, § 1400 et seq.) given the state's concern over illegal gambling (see, e.g., Bus. & Prof. Code, §§ 19401 & 1981 et seq.). Nevertheless, these regulations, including those concerning licensing requirements and fees, do not make horse racing in California a government business. Instead, the regulations are the means by which the state government protects the public from illegal gambling and the prospects of organized crime. Finally, the fact that the public is concerned about illegal gambling and the prospects of organized crime does not render either Calfax Racing Association or

plaintiff a "public official" as that concept is applied in defamation actions.

Accordingly, we hold as a matter of law plaintiff was not a "public official."

Defendants suggest this court should continue its analysis and find plaintiff was nevertheless a "public figure" as a matter of law. This we may not do, however, based on the record before us. Defendants chose their own course to establish the *New York Times* defense when they sought to prove plaintiff was a "public official." They could have attempted to establish the "public figure" designation as an undisputed fact. Having selected their course, defendants produced a very limited statement of undisputed facts, namely, plaintiff's interest in Calfax and Calfax's 1980 horse race association license and application for a 1981 license. These facts do not support a "public figure" determination as a matter of law.

By suggesting we could find plaintiff was a "public figure," defendants attempt to minimalize the distinction between a "public official" and a "public figure" as a minor legal technicality. Their zealous advocacy, however, blurs their vision. The distinction between "public official" and "public figure" is not a trivial one.

Lest defendants should forget, plaintiff is entitled to pursue his defamation action as an ordinary citizen against defendants, unless defendants can prove plaintiff's conduct moved him outside the protected privacy of the ordinary person.

To establish the "public figure" designation as a matter of law, defendants must show, with undisputed evidence, plaintiff either occupied a position of persuasive power and influence, voluntarily injected himself into the resolution of a particular public controversy, or attempted to

influence public opinion regarding a cause. Defendants have not produced such evidence. However, our holding that plaintiff is not a "public official" as a matter of law is made without prejudice to defendants seeking summary relief in the trial court on the "public figure" issue.

II. ACTUAL MALICE.

On remand, defendants may decide to pursue the question of whether plaintiff was a "public figure" at the time of publication. Should they be successful, the defense will once again turn on whether defendants published the articles with actual malice toward plaintiff. Plaintiff challenges the trial court's determination of no triable issue regarding actual malice. We therefore turn to the question of whether there was a triable issue on the question of actual malice.

If the plaintiff in a defamation action is a public figure, he or she may not recover without clear and convincing proof that the libelous statement was made with actual malice, i.e., "with knowledge that it was false or with reckless disregard of whether it was false or not." (*New York Times, supra,* 376 U.S. at pp. 279-280; see also *Curtis Publishing Co. v. Butts, supra,* 388 U.S. 130.) In a summary judgment motion on a *New York Times* defense, the trial court must determine "whether the evidence presented is such that a reasonable jury might find that actual malice had been shown with convincing clarity." (*Anderson v. Liberty Lobby, Inc., supra,* 447 U.S. 242 at p. 257.) Here, the trial court found no such evidence had been presented.

On appeal, plaintiff contends there was a triable issue of fact concerning reckless publication. Plaintiff suggests this "court must utilize reasonable inferences as a reasonable man to determine whether respondents here had

serious doubts as to the truthfulness of their materials, or whether they *should have had* serious doubts and then simply proceeded to disregard such doubts in a reckless disregard for the truth."

Plaintiff misunderstands the standard for "reckless disregard." The Supreme Court in *St. Amant v. Thompson, supra,* 390 U.S. at page 730, acknowledged there was no "one infallible definition" for the phrase. Nevertheless, the court found it clear:

> "reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice." (*Id.* at p. 731.)

The court conceded its reckless disregard standard might permit recovery in fewer situations than would a rule that publishers must satisfy the standard of the reasonable man or the prudent publisher. However, to insure the ascertainment and publication of the truth about public affairs, it is essential the First Amendment protect some erroneous publications as well as true ones. (*Id.* at pp. 731-732.)

With the high court's standard on reckless disregard in mind, we will apply it in this case. Plaintiff makes numerous arguments in support of his claim of error. His best argument for a triable issue of fact relates to the following excerpt from the first article published by defendants:

> "In the last half of 1974, Mosesian formed a partnership with a prostitute identified by law en-

> forcement officers as working for Prestidge. The purpose of the alliance was operation of the Cedar Heights Market, and the partnership applied to the state Department of Alcoholic Beverage Control for a license to sell beer and wine at the market.
>
> "But an ABC investigation turned up a number of flaws in the application, including the fact that Mosesian's partner was a known prostitute and front for Prestidge, and Prestidge himself ran the market throughout the time the partnership claimed to control it.
>
> "The ABC prove also uncovered a trail of tangled financial dealings involving the prostitute, Prestidge, other members of the Fresno underworld and Mosesian."

Plaintiff contends there was no documentary support for the last paragraph quoted above, namely that the ABC investigation uncovered a "trail of tangled financial dealings" involving an alleged known prostitute, Fresno's "most notorious hoodlum" during that period, other members of the Fresno underworld and plaintiff. If there was no evidentiary support for this statement, he then argues, this is evidence the publications were not made in good faith. (see *St. Amant, supra,* 390 U.S. 727, 732.)

A major thrust in defendants' initial article was that if the CHRB had done a more thorough job of investigating Calfax's application to operate the 1980 spring horse race meet, it would have uncovered the information which the defendant reporters found in other state or public records. The strong inference to be drawn from reading defendants' publications was that the defendants were only reporting that which could be found in other state or public records.

Perhaps because of this, defendants in declarations supporting their motion for summary judgment attached as exhibits the documents they obtained and used to write the articles. Defendants argue the phrase "tangled financial dealings" was supported by ABC documents and records arising out of the prostitute's subsequent bankruptcy action. Yet, defendants' argument misses the point.

The article said *the ABC probe* uncovered a trail of tangled financial dealings. As a result, defendants could not rely on records from an admitted subsequent bankruptcy proceeding to support what the ABC uncovered. More importantly, the ABC documents did not uncover financial dealings, tangled or otherwise, involving the alleged prostitute, the hoodlum, other members of the Fresno underworld *and* Mosesian.

The ABC investigation focused in large part on Connie Friesen, the so-called prostitute. From the ABC records submitted by defendants in support of summary judgment, it appears the ABC was concerned, in large part, with the source of Friesen's funds to purchase the market. There are extensive handwritten notes apparently taken by ABC investigators tracing the sources of the loans Friesen secured. Repeatedly in these notes there appears the name Gary Prestidge (the person defendants described in their publications as "Fresno's most notorious hoodlum for a decade ending in the late 1970s").

The only mention of Mosesian in these tracing notes are references to Friesen depositing loan proceeds into Mosesian's client trust account, Mosesian thereafter writing checks for auctioned items to the bankruptcy trustee for the former owner of the market, and the following statement "all quick claims drawn and recorded by Paul Mosesian." Otherwise in the ABC records there is: (1) a

copy of a certificate of limited partnership to engage in the retail grocery business between Friesen and Mosesian dated October 31, 1978, after Friesen had already acquired the market; and (2) a handwritten note stating the agreement failed to qualify as a bona fide limited partnership because Mosesian would receive 10 percent of the net profits and yet his liability would be limited to one dollar.

These records do not disclose any financial dealings involving Mosesian with anyone other than Friesen. The ABC may well have uncovered "a trial of tangled financial dealings" involving Friesen, Prestidge and other so-called members of the Fresno underworld. Nevertheless, defendants had no documents from the ABC investigation which showed Mosesian involved in financial dealings with Prestidge and other members of the Fresno underworld. The conclusion drawn of Mosesian's involvement was the reporters, not the ABC.

It could also be argued that plaintiff misreads the challenged language. It did not say plaintiff had financial dealings which involved Friesen, Prestidge and other underworld figures. Rather, defendants reported the probe uncovered tangled financial dealings involving different combinations of Friesen, Prestidge, other underworld figures and Mosesian, but not necessarily Prestidge and Mosesian or other underworld figures and Mosesian.

If this were a case governed by a preponderance of the evidence standard, it is conceivable a reasonable trier of fact might draw the inference which plaintiff urges. It that situation we would find a triable issue of fact. However, as explained in the outset of this issue, we must determine from the evidence presented whether a reasonable jury might find that actual malice had been shown with convincing clarity. (*Anderson v. Liberty Lobby, Inc., supra*, 477 U.S. at p. 257.) Given that standard we

conclude the trial court properly ruled there was an insufficient showing of actual malice to create a triable issue of fact.

III. DISPOSITION.

The judgment is reversed. The matter is remanded to the trial court for further proceedings consistent with the views expressed herein. Costs of appeal are awarded to plaintiff/appellant.

_____

Woolpert, J.

WE CONCUR:

_____

Franson, P.J.

_____

Ardaiz J.

APPENDIX B

ORDER DENYING REVIEW AFTER JUDGMENT BY THE COURT OF APPEAL

5th District, No. F008696

S008133

In the Supreme Court of the State of California

IN BANK

MOSESIAN, PAUL

vs.

McCLATCHY NEWSPAPERS *et al.*

Filed: Feb. 1, 1989, B.W.: Clerk.

Respondents' Petition for Review DENIED.

LUCAS
Chief Justice

APPENDIX C

In the Court of Appeal
of the
State of California
IN AND FOR THE
Fifth Appellate District

MOSESIAN, PAUL
vs.
McCLATCHY NEWSPAPERS
McCULLOCH, FRANK
F008696
Fresno County No. 274889-5

REMITTITUR

I, KEVIN A. SWANSON, Clerk of the Court of Appeal of the State of California, for the Fifth Appellate District, do hereby certify that the original opinion or decision entered in the above-entitled cause on October 26, 1988 has now become final.

✔ Appellant(s) ____ Respondent(s) to recover costs
____ Each party to bear own costs
____ Costs are not awarded in this proceeding

WITNESS my hand and the seal of the Court affixed at my office on February 3, 1989.

KEVIN A. SWANSON, Clerk

DIANE L. LOYD
Deputy Clerk

APPENDIX D

CALIFORNIA CONSTITUTION — ARTICLE IV

§ 19. Lotteries; Horse racing; Bingo; Casino gambling .... (b) The legislature may provide for the regulation of horse races and horse race meetings and wagering on results ....

4 CALIFORNIA ADMINISTRATIVE CODE — ARTICLE 1. RACING BOARD POWERS AND JURISDICTION

1400. Powers Reserved.

All powers of the Board not specifically defined in these rules and regulations are reserved to the Board.

1401. Jurisdiction.

The jurisdiction of the Board over matters covered by law or the rules is continuous throughout the year.

1402. Controlling Authority.

The law, the rules, and the orders of the Board supersede the conditions of a race or the conditions of a race meeting and govern thoroughbred, harness, quarter horse, appaloosa, arabian, paint and mule racing, except if they can have no application to a specific type of racing. In the latter case the stewards may enforce rules or conditions of the Jockey Club for thoroughbred racing, the United States Trotting Association for harness racing, the American Quarter Horse Association for quarter horse racing, the Appaloosa Horse Club for Appaloosa racing, the International Arabian Horse Association for arabian racing, the American Paint Horse Association for paint racing, and the American Mule Association for mule racing, if such rules or conditions are not inconsistent with the rules of the Board.

1405. Punishment by the Board.

Violation of any provision of this chapter, whether or not a penalty is fixed therein, is punishable in the discretion of the Board by revocation or suspension of any license, by fine, or by exclusion from all racing enclosures under the jurisdiction of the Board, or by any combination of these penalties. The Board may independently punish any misconduct of any person connected with racing.

1406. Suspension of Rule.

For good cause, with or without a hearing, the Board may temporarily suspend the application of any of its rules upon any conditions it may impose. Every application for such action and any such action by the Board shall, insofar as possible, be in writing. If not in writing, it shall be confirmed in writing as soon thereafter as possible.

1407. Extensions for Compliance.

If a licensee fails to perform an act, or obtain required action from the Board, within the time prescribed therefor by these rules, the Board, at some subsequent time, may allow the performance of such act or may take the necessary action with the same effect as if the same were performed within the prescribed time.

1413. Notice to Licensee.

Whenever notice is required to be given by the Board or the stewards, such notice shall be given in writing either by personal delivery to the person to be notified or by mailing such notice addressed to such person at his address as on file with the Board.

1414. Appointment of Referee.

When directed by the Board, any one commissioner, the secretary, any hearing officer assigned by the Office of Administrative Hearings or any other qualified person may sit as referee for the taking of evidence in any matter pending before the Board; any such referee shall report to the Board outlining all findings and the Board shall determine the matter as if such evidence had been presented to the full Board.

4 CALIFORNIA ADMINISTRATIVE CODE — ARTICLE 2. DEFINITIONS

1420. Definitions.

As used in these rules:

(a) "Chairman" means the member elected by the Board to be Chairman of the Board and its presiding member.

(b) "Commissioner" means a member of the Board.

(c) "Age of Horse" means the age as reckoned beginning on the first day of January of the year in which the horse was foaled.

(d) "Authorized Agent" means an agent appointed by a written document which is signed by the owner and filed with the Board.

(e) "Breeder" means the owner of the dam at the time of foaling.

(f) "Conviction" includes a plea of guilty, forfeiture of bail, a judgment or verdict of guilty, or a conviction following a plea of nolo contendere, whether or not the conviction is later set aside pursuant to the provisions of Penal Code 1203.4.

(g) "Driver" means one who drives and controls the horse from a seated position on a two-wheel vehicle.

(h) "Horse" means an equine and includes a stallion, gelding, mare, colt, filly or ridgling and includes mule, jack, jenny, ginnet and hinney.

(i) "Jockey" means a race rider.

(j) "Licensee" means a licensee of the California Horse Racing Board.

(k) "Maiden" means a horse which has never won a race on the flat in a state or country where the races are covered by the Daily Racing Form or other similar authorized publication. A maiden which has been disqualified after finishing first is still a maiden. Conditions referring to maidens apply to the status at the time of starting.

(l) "Nominator" means a person in whose name a horse is entered to race.

(m) "Objection" means a formal complaint filed before a race with the stewards or the Board objecting to the eligibility of any horse to compete in the race or the right of any person to participate in the race.

(n) "Owner" includes the owner, part owner and lessee of any horse. An interest only in the earnings of a horse does not constitute ownership. In the case of husband and wife it is presumed that joint ownership exists.

(o) "Post" means the place on the race course from which a start is made.

(p) "Post Time" means the definite time for the start of a race, and is indicated by a clock device set up as directed by the Board.

(q) "Premises" means the inclosure and all other areas collectively utilized by an association in connection with

its conduct of a licensed race meeting, including parking lots, auxiliary stabling areas, public enclosure and restricted areas, whether or not such areas are contiguous to the inclosure.

(r) "Protest" means a formal complaint filed after a race with the stewards or the Board protesting the right of any horse to a place, purse or award in such race, or protesting any decision of the stewards relating to the eligibility, participation or placing of any horse in a race.

(s) "Race" means a contest among horses for a purse, stake or reward, contested at an authorized race meeting. "Race" includes but is not limited to:

(1) Purse Race. A race for money or any other prize to which the owners of the horses engaged do not contribute.

(2) Stake Race. A race for which owners of horses entered or engaged for the race contribute to a purse for which money or any other prize may be added, nominations to which close 72 hours or more before starting.

(3) Claiming Race. A race in which any horse entered therein may be claimed in conformity with the rules established by the Board.

(4) Handicap Race. A race in which the weights to be carried by the entered horses are adjusted by a handicapper, board of handicappers or the Racing Secretary, for the purpose of equalizing their respective chances of winning.

(5) Overnight Race. A race in which entries close 72 hours or less, exclusive of Sundays, in advance of the first race of the day on which the race is to be run.

(6) Walkover. A stake race in which only one horse starts or in which all the starters are owned by the same interest.

(7) Invitational Stake Race. An invitational stake race or an invitational handicap race for which owners do not contribute to the purse, but which is advertised in the regular stakes program, shall also be considered a stake race.

(8) Non-wagering Race. A race contested without parimutuel wagering on its results including a race upon which parimutuel wagering is cancelled.

(9) Match Race. A race contested between two horses under conditions of the contest agreed to by their owners.

(10) "Special Racing Event." A race of unique interest, magnitude or fame. "Special Racing Event" shall also mean an Exhibition Race when approved by the Board.

(11) "Exhibition Race." A race contested under conditions established by the association as a promotional event or to provide a special racing opportunity to a particular horse or class of horse or class of participants and to which the association contributes the purse or awards for the contest. No parimutuel wagering may be conducted on the results of an exhibition race.

(t) "Race on the Flat" means a race run over a course on which no jumps or other obstacles are placed.

(u) "Recognized Meeting," "Race Meeting," or "Authorized Meeting" means the entire period under the conduct of an association within the inclosure of the designated grounds, and for which a license has been granted by the Board. When the context in the rules applies, it may include a meeting conducted by an association in some other jurisdiction recognized by the Board.

(v) "Restricted Area" means those areas within the inclosure where admission can be obtained only upon presentation of authorized credentials, proper license or visitor's pass, including those areas designated as the

stable area, receiving or detention barn, jockey room, saddling paddock, race course and parimutuel department.

(w) "Rules" means the Rules and Regulations of the California Horse Racing Board and the orders of the Board.

(x) "Starter" means a horse when it is in the starting gate stall, and when the field is dispatched by the starter, the stall gate in front of the horse is opened.

(y) "Time of Race Meeting" means that period of time commencing at 12:01 A.M. on the first day of racing at a recognized meeting and concluding at 12:00 midnight after the final race of the last day of racing as allocated and licensed by the Board.

(z) "Weight for Age" means the standard weight to be carried by a horse according to the scale established by the rules, and remains such though there be penalties or allowances. . . .

4 CALIFORNIA ADMINISTRATIVE CODE — ARTICLE 3. RACING ASSOCIATION

1430. Allocation of Racing Weeks and Dates.

The Board shall allocate racing weeks and dates for the conduct of horse racing in this State for such time periods and at such racing facilities as the Board determines will best subserve the purposes of the Horse Racing Law and which will be in the best interests of the people of California in accord with the intent of the Horse Racing Law. Upon a finding by the Board that the allocation of racing weeks and dates for any racing year is completed, the racing weeks and dates so allocated shall be subject to reconsideration or amendment only for conditions unforeseen at the time of the allocations. The allocation of racing weeks and dates does not commit the Board to the

granting of a license to conduct a horseracing meeting to any specific racing association nor for the allotted time period nor at the racing facility scheduled for such racing weeks and dates.

1431. Notice of Intention to File for License.

Every person who has not held a license to conduct a horseracing meeting in the preceding year who intends to file an application to conduct an authorized race meeting and/or an application for license to conduct a horseracing meeting shall file with the Board a Notice of Intention to file such applications. The required notice of intention shall be filed no later than one hundred twenty (120) days in advance of the proposed or scheduled date for the commencement of the meeting intended to be specified in the application for license. Any prospective applicant for license to conduct a horseracing meeting failing to file timely the notice of intention may be disqualified and its application for license refused summarily by the Board. In the absence of any timely notice of intention filed by a prospective applicant intending to file an application for a license for a race meeting conducted in the preceding year by any other person the presumption shall be that the person having held the license to conduct the horseracing meeting in the preceding year is deemed to have been allocated the racing weeks and dates for a like horseracing meeting as scheduled by the Board for the current annual racing calendar.

1432. Board May Demand Information.

The Board may require any racing association, prospective racing association or other person intending to make application for license to conduct a horseracing meeting to furnish the Board with a detailed proposal and disclosure as to its proposed racing program, purse program, officials, principals or shareholders, plant, premises, facil-

ity, finances, lease arrangements, agreements, contracts and such other information as the Board may require to determine the eligibility and qualifications of the association or person to conduct a race meeting.

1433. Application for License to Conduct a Horseracing Meeting.

Unless the Board shall require an earlier filing, at least ninety days before the time allocated by the Board for a race meeting to commence the association shall file with the Board an application for a racing license; which application shall contain the following:

(a) The name under which the association intends to conduct its meeting.

(b) The true names of all officers and directors of the association if a corporation, or the true names of all partners whether general partners or limited partners if a partnership, and the names of those shareholders holding more than 5% of the outstanding shares of the corporation.

(c) The business address of the association to which notices may be sent and the name of the person or persons authorized to receive notice on behalf of the association.

(d) The inclusive dates allocated for the race meeting.

(e) The number of weeks of racing and the number of days or nights to be raced; and the days and nights within that period that the association will not conduct races (dark days).

(f) The number of races to be programmed on each racing day, and the breed of horse to be included in each race.

(g) The stakes program, minimum purse and approximate amount of total purses to be offered at the race meeting.

(h) The dates upon which the association shall operate for charity.

(i) The types of wagering to be offered and a declaration as to the minimum wager for each type of wagering.

(j) The type of pari-mutuel or totalisator equipment to be used and the name of the person supplying such equipment.

(k) The type of photographic device to be used for photographing the finish of all races or the name of the person supplying such service.

(l) The type of photo-patrol or video equipment to be used to record all races, their number and locations, and the name of the person supplying such service.

(m) The type of timing device to be used for the timing of all races.

(n) The names and addresses of all persons to whom concessions are to be granted for the meeting.

(o) The schedule of charges the association proposes to make, and the kind of passes and the number thereof the association proposes to issue.

(p) The names of all racing officials engaged or nominated for the meeting, and the salaries and other benefits to be paid to each racing official.

(q) A statement whether all labor agreements, concession contracts, horsemen's agreements or lease arrangements which are necessary to conduct the entire race meeting have been finalized.

(r) A current financial statement of the association, including balance sheet and profit and loss statement, and the financial report as required by the State Department of Finance giving a summary of revenues and expenses for the association's fiscal year including full results of charity day operations, and any annual or periodic report made by the association to its shareholders or to the Securities and Exchange Commission during the preceding 12 months.

(s) The name of the parimutuel audit firm engaged for the meeting.

(t) Such other information as the Board may demand.

1434. Denial of License.

Notwithstanding the allocation of racing weeks and dates and the provisions of Section 1431 of this Article the Board may deny a license to conduct a horseracing meeting when in its judgment it determines the proposed horseracing meeting is not in the public interest or fails to subserve the purposes of the Horse Racing Law or fails to meet any requirement of the law or the Board's regulations. In addition to any other ground or reason, the Board may refuse to issue or deny a license to any applicant who fails to provide the Board with evidence that it has a binding commitment for the use of an approved racing facility or who fails to provide the Board with evidence of its ability to meet its estimated financial obligations for the conduct of the horseracing meeting.

1436. Duty of License Association.

Each association shall observe and enforce the rules. The license is granted on the condition that the association, its officials, its employees and its concessionaires shall obey all decision and orders of the Board.

1437. Conditions of a Race Meeting.

The association may impose conditions for its race meeting as it may deem necessary, provided, however, that such conditions may not conflict with the rules, regulations or orders of the Board, that such conditions are published in the condition book or otherwise made available to all licensees participating in its race meeting, that such conditions are posted on the association bulletin board, and a copy of the conditions filed with the Board. The association may also impose requirements, qualifications or requisites for its race meeting as it may deem appropriate.

1439. List of Shareholders.

Each association shall, if a corporation, maintain a current list of stockholders and the number of shares held by each and such list shall be available for inspection by the Board. The association shall immediately inform the Board of any change of corporate officers or directors, or any change in stockholders when such change of the holdings of any individual stockholder exceeds 5% of the outstanding shares of the corporation. The real owner of the stock shall be listed if known. The Board may require the disclosure of the real name of any individual or person who holds over 5% of the outstanding shares of any racing association and may refuse to issue a license to, or suspend the license of, any association which fails to disclose the real name of such shareholders if such information is known to or ascertainable by the association.

1440. Approval and Licensing of Concessionaires.

No association or person licensed by the Board to conduct a horseracing meeting shall engage, contract with or permit any person to act as a concessionaire for the purpose of providing service to the association in the form

of totalisator equipment, food and beverage service, janitorial service, video or photofinish service unless such person providing such service has been approved and licensed by the Board. An application for license to act as a concessionaire shall be on such form as the Board may direct and may accompany the application for license to conduct a horseracing meeting unless the Board shall require the application for the concessionaire be filed earlier.

1441. Photographic Device.

All associations shall install and maintain in good service a photographic device for photographing the finishes of all races to assist the placing judges and the stewards in determining the finishing positions of the horses. A photograph of each finish shall be promptly posted for public view in at least one conspicuous place in the public inclosure.

1442. Photographic or Videotape Recording of Races.

All associations shall install and operate a system to provide a photographic or videotape recording of each race so that such recording clearly shows the position and action of the horses and jockeys at close enough range to be easily discernible. If a foul is claimed, or observed by the officials, no decision shall be rendered by the stewards until they have viewed the recording of the race. Except with prior approval of the Board, every race other than a race run solely on a straight course shall be recorded by use of at least three cameras to provide both panoramic and head-on views of the race.

1443. Identification of Photographs.

All photographs or photographic or videotape recordings required by these rules shall be identified by indicat-

ing thereon the day, number of the race and the name of the association at which the race is held.

1444. Altering Official Recordings.

No person shall cut, mutilate, alter or change any photofinish photograph, film patrol photo, photographic or videotape recording for the purpose of deceit or fraud of any type.

1445. Preservation of Official Recordings.

All associations shall preserve all photographic or videotape recordings of all races for at least 90 days after the close of their meeting. Upon request of the Board the association shall furnish the Board with a clear positive print of the photographic recording of any race or a kinescope print of the videotape recording of any race.

1446. Viewing Room Required.

The association shall maintain a viewing room for the purpose of projecting the photographic recording of races, or the videotape screening of the races, for viewing by jockeys, trainers, owners, and other interested persons authorized by the stewards.

1447. Communication System Required.

The association shall install and maintain in good service a communication system between the stewards' stand, the parimutuel department, the patrol judges, the starter, the ambulance locations, and other designated places.

1448. Bulletin Board Required.

The association shall erect and maintain a bulletin board close to the racing secretary's office or in places

where access is granted to all licensees, upon which all official notices of the Board shall be posted.

1449. Distance Poles.

The distance poles shall be the following colors:

¼ poles ..... red and white horizontal stripes
⅛ poles ..... green and white horizontal stripes
1/16 poles ..... black and white horizontal stripes

1450. Complaint Desk.

The association shall maintain a place where written complaints or claims of violations of the rules or laws may be filed. A copy of any written complaint or claim filed with the association shall be furnished the Board within 48 hours of its receipt.

1452. Feed and Supplies.

No association shall grant an exclusive concession to any vendor of feed, racing supplies or racing services.

1453. Racing Selection Services.

The association shall prohibit the sale, offering for sale, or giving away of any racing selection sheet, or other racing prediction which is required to be filed with the Board pursuant to the provisions of Section 19664 of the Business and Professions Code, upon the premises of the association, except with prior approval of the Board.

1454. Board May Direct Notices on Program.

The Board may direct the association to publish in the program any information and notices to the public as it deems necessary.

1456. Honoring Official Credentials.

Credentials issued by the Board shall be honored for admission at all gates and entrances and to all places within the inclosure. Automobiles with vehicle decals issued by the Board shall be permitted ingress and egress at any point. Credentials issued by the National Association of State Racing Commissioners to its members, past members and staff shall be honored by the association for admission into the public inclosure when presented therefor by such persons.

1457. Office Space for Board.

The association shall provide within its grounds adequate office space for use by the Board and its employees and shall provide such necessary office furniture and utilities as may be required for the conduct of the Board's business at such association's meeting.

1458. Right of Board to Information.

The association shall furnish the Board with a daily report of its attendance, parimutuel handle, license fee, and commissions, and shall also report the names of all Cal-Bred winners, the names of all horses claimed and the claimants thereof, and any other information the Board may require on such report.

1459. Telephone and Communication Systems.

All methods of communication within or from within the inclosure is subject to the approval of the Board. Public telephones within the inclosure shall be locked from one hour before the post time of the first race of the day until after the last race has been declared official. Except with permission of the Board, all other telephones within the inclosure shall be connected with a central switchboard and telephone calls originating from within

the inclosure to a location outside the inclosure shall be placed through an operator during the racing program. The Board may authorize the monitoring of any such call placed from within the racing inclosure during the running of the races or during the racing program and every person using the association's telephones consents thereto.

1460. Equipment and Apparatus Subject to Approval.

All equipment, devices or apparatus used to officially record, time, photograph, film or videotape the racing program, or used within the parimutuel department for the sale, calculation, display of odds, or encashment of tickets, is subject to the approval of the Board.

1461. Duty to Compile Official Program.

The association shall compile an official program for each racing day which shall contain the names of the horses which are to run in each race together with their respective post positions, age, color, sex, breeding, jockey, trainer, nominator, owners or stable name, racing colors, weight carried, conditions of the race, the order in which each race shall be run, the distance to be run, the value of each race, and the probable odds of each horse.

1469. Safety of Race Course.

The association shall take cognizance of any complaint regarding the safety of its race course or premises, and shall maintain in safe condition the race course and all rails and other equipment required for the conduct of its races.

1470. Accounting Practices and Responsibility.

Every association shall maintain in an approved depository those amounts deducted from the parimutuel handle

which are retained by the association for distribution for purposes specified in the law, rules or agreements including, but not limited to purses, breeder's awards, and unclaimed parimutuel distribution. Each racing association and its managing officers are jointly and severally responsible to assure that the amounts retained from the parimutuel handle are distributed in accordance with law, rules or agreements (other than collective bargaining) and not otherwise. As to racing associations which have not previously operated, or to new operators of established racing associations, or to racing associations which have not demonstrated financial stability, the Board shall require advance payments, or the posting of a security instrument as a condition precedent to the issuance of the racing license. The Board may, at its discretion, require periodic audits to determine that racing associations have funds available to meet those distributions for purposes specified above.

[4 CALIFORNIA ADMINISTRATIVE CODE §§ 1480-1633 OMITTED.]

4 CALIFORNIA ADMINISTRATIVE CODE — ARTICLE 7. CLAIMING RACES

1650. Racing Interest Defined.

For the purposes of this article a racing interest is defined as any individual owner, or any partnership of owners, or any registered stable, but not including a lessee, which participates as an owning entity or nominator of a race horse. A licensed owner may participate in more than one racing interest.

1651. Eligibility to Claim.

In claiming races any horse is subject to being claimed for its entered price by any racing interest, by any licensed horse owner, or by any person who has estab-

lished his qualifications to claim by filing an application for license as horse owner and having been granted a certificate authorizing the claim. Such claim certificate shall not be issued until all conditions and qualifications for a horse owner's license have been met or completed.

1652. Prohibited Actions With Respect to Claims.

No person shall:

(a) Enter into or offer to enter into any agreement to claim any horse unless all parties to the agreement are eligible to claim.

(b) Claim his own horse or cause his own horse to be claimed directly or indirectly for his own account.

(c) Attempt to prevent or prevent any racing interest from running a horse in any race for which it is entered or from claiming any horse in any claiming race.

(d) Make any agreement with any other person or racing interest for the protection of each other's horses in any claiming race.

(e) Make any loan agreement for the purpose of obtaining funds for the claim of any horse when a condition of such agreement is a lien on the horse to be claimed.

(f) Except with permission of the stewards, remove any horse which has been entered in a claiming race from the grounds of the association where it is entered to race, or fail or refuse to comply with any rule or any condition of the meeting for the purpose of avoiding or preventing a claim for such horse.

(g) Claim more than one horse for the account of any one racing interest from any one claiming race, nor, if an authorized agent representing more than one racing interest, file more than two separate claims on behalf of any of the racing interests he may represent.

(h) Offer any monetary or other reward to any pony boy, exercise boy, groom, stable employee or other licensee for information relative to the physical condition or merit of a horse, or provide information relative to the physical condition or merit of a horse, from the time such horse is entered in a claiming race until the expiration of time to make a claim on such horse in that claiming race.

1653. Responsibility for Prohibited Actions.

If a racing interest is comprised of more than one licensed owner, all owners comprising such racing interest are jointly and severally liable for any action of the racing interest.

1654. Affidavit May Be Required.

The stewards may require any person or any racing interest, its members or authorized agent, making a claim for a horse in any claiming race to make an affidavit in writing that he is claiming said horse for his own account if an individual owner, for the account of the racing interest if comprised of more than one licensed owner, or for the claiming racing interest if an authorized agent, and that the claim is not being made for any other person.

1655. Form and Deposit of Claim.

All claims shall be in writing on a form approved by the Board, shall be sealed and deposited in the claim box at least 15 minutes before the post time of the race in which the horse to be claimed is entered. No money shall accompany a claim form and any person or racing interest making a claim shall first have the amount of the claim on deposit with the association or the paymaster of purses at the meeting. The paymaster or other authorized official shall verify the amount required is on deposit and that the person submitting the claim is eligible to claim in accor-

dance with Section 1651 by initialling or otherwise marking the claim envelope. The filing of a claim by depositing the claim form in the claim box constitutes a contract of purchase at the established price and in accordance with the rules for claiming.

1656. Errors Which Invalidate Claim.

A claim is invalid if the name of the horse to be claimed is erroneously spelled or not specified on the claim form; or if the claim form is not signed by an owner authorized to claim or a member of a racing interest authorized to claim or their properly registered authorized agent; or is not accompanied by a certification from the paymaster of purses that the amount of the claim and all applicable taxes is on deposit with the association or such paymaster of purses; or is deposited at a place other than that provided by the association; or is not deposited within the correct time; or does not specify the racing interest making the claim; or is otherwise so defective in any particular that the stewards cannot approve its validity; or fails to specify the designated claiming price.

1657. Opening of Claim.

After the horses in a claiming race have reached the post, the stewards or their delegate shall open and examine the claims but no information concerning such claims shall be divulged to anyone other than the authorized racing officials until the race has been run. Should more than one claim be filed for the same horse, the successful claimant shall be determined by lot in a manner specified by the stewards.

1658. Vesting of Title to Claimed Horse.

Title to a horse which is claimed shall be vested in the successful claimant from the time the field has been

dispatched from the starting gate and the horse becomes a starter; and said successful claimant becomes the owner of the horse whether it be alive or dead, sound or unsound, or injured during the race or after it. Only a horse which is officially a starter in the race may be claimed. A subsequent disqualification of the horse by order of the stewards or the Board shall have no effect upon the claim.

1659. Delivery of Claimed Horse.

A horse which has been claimed shall not be delivered by the original owner to the successful claimant until authorization is given by the stewards, and every horse so claimed shall run for the account of the racing interest in whose name it is entered for such race. No horse claimed out of a claiming race shall remain in the same stable under the management of its former owner or trainer.

1660. Delivery of Certificates or Documents.

A proper transfer of certificate of registration or eligibility certificate shall be made by the stewards or the delegated racing official indicating transfer of ownership to the successful claimant. No person shall willfully refuse to surrender any document of ownership or other document required by the stewards for the purpose of avoiding or hindering the transfer of a successfully claimed horse to a successful claimant.

1661. Warranty of Clear Title.

Every racing interest entering a horse in a claiming race does warrant that the title to said horse is free and clear of any existing claim or lien, either as mortgage, bill of sale, or lien of any kind, unless before entering such horse the written consent of the holder of the claim or lien has been filed with the stewards and the racing secretary and its entry approved by the stewards.

1662. Sale or Transfer of Claimed Horse.

No horse claimed out of a claiming race shall be sold or transferred to any person for racing purposes within 30 days exclusive of the day such horse was claimed.

1663. Entry of Claimed Horse.

A horse claimed out of a claiming race shall be eligible to race at any racing association within the State of California immediately after being claimed provided further that it shall not be eligible to start in any other claiming race for a period of 30 days exclusive of the day such horse was claimed for less than 25 percent more than the amount for which it was claimed; nor shall such claimed horse be eligible to race in any State other than California until the close of the meeting where it was claimed except to race in a stake race. A claimed horse may be removed from the grounds of the association where it was claimed for non-racing purposes.

1664. Entry of Mare in Foal in a Claiming Race.

No person shall enter a mare in any claiming race when such mare is pregnant, unless prior to the time of entry the owner shall have deposited with the Racing Secretary a signed agreement whereby the owner at the time of entry shall provide to the successful claimant of such mare without cost, protest or fee of any kind a valid stallion service certificate covering the breeding of the mare. A successful claimant of a mare in a claiming race may file with the Board a petition for recision of the claim within 30 days exclusive of the date of claim if such successful claimant finds that the claimed mare is pregnant and if the agreement to provide a stallion service certificate has not been deposited as required by this section.

1665. Recision of Claim.

The Board may set aside and order recision of a claim for any horse from a claiming race run in this State upon a showing that any party to the claim committed any prohibited action with respect to the claim or that the owner of the horse at the time of entry in the claiming race failed to comply with any requirement of this article regarding entry of a horse into a claiming race. Should the Board order a recision of a claim it may also, in its discretion, make a further order for the costs of maintenance and care of the horse as it may deem appropriate. Any petition or action taken to rescind a claim shall be commenced no later than 30 days from the date the claim was made.

1667. Claims at California Fair Circuit.

The Alameda County Fair, the Solano County Fair, the Sonoma County Fair, the San Joaquin County Fair, the Humboldt County Fair, the California State Fair, the San Mateo County Fair and the Fresno District Fair together are deemed to comprise the Northern California Fair Circuit. For the purposes of claiming the Northern California Fair Circuit shall be considered as one race meeting.

1680. Jockeys to Report.

Every jockey engaged to ride in a race shall report to the Jockey Room at least one hour before post time of the first race and shall weigh out at the appointed time unless excused by the stewards. After reporting, a jockey shall not leave the Jockey Room except to ride in a race until all his or her engagements for the day have been fulfilled unless excused earlier by the stewards.

1682. Weighing Out.

All jockeys taking part in a race must be weighed out by the clerk of scales no more than one hour preceding the time fixed for the race. Any overweight in excess of one pound shall be declared by the jockey to the clerk of scales, who shall have such overweight and any change to jockeys posted immediately for public information and announced over the public address system.

1683. Maximum Overweight.

No horse shall carry more than two pounds overweight without consent of its owner, his agent, or his representative, but shall not carry more than seven pounds overweight in any race.

1684. Items Included in Weight.

A jockey's weight includes his riding clothing, saddle and pad; but shall not include the jockey's safety helmet or his whip, nor the horse's bridle.

1685. Equipment Requirement.

No bridle shall weigh more than two pounds, nor shall any whip weigh more than one pound. No whip shall be used unless it shall have affixed to the end thereof a looped leather "popper" not less than one and one-quarter inches in width, and not over three inches in length, and be "feathered" above the "popper" with not less than three rows of leather "feathers". All whips are subject to inspection and approval by the stewards.

1686. Responsibility for Weight.

The trainer and owner shall be responsible for the weight carried by the horse after the jockey has been weighed out for the race by the clerk of scales. The trainer

or owner may substitute a jockey when the engaged jockey reports an overweight in excess of two pounds.

1687. Deposit of Jockey Fee.

The minimum jockey mount fee for a losing mount in the race must be on deposit with the paymaster of purses, except for a jockey riding for his contract employer, prior to the time for weighing out, and failure to have such minimum fee on deposit is cause for disciplinary action and cause for the stewards to declare the horse for which such fee is to be deposited. The association assumes the obligation to advance the minimum jockey fee to the engaged jockey in the absence of a declaration of the horse from the race, and any such advanced fee is a lien upon the horse.

1688. Use of Whips.

In all races where a jockey will not ride with a whip an announcement shall be made over the public address system of such fact. No jockey carrying a whip during a race shall fail to use the whip in a manner consistent with using his best efforts to win. Jockeys are prohibited from whipping a horse upon the head, or during the post parade except when necessary to control the horse, or excessively or brutally.

1689. Safety Helmets Required.

All jockeys and drivers, when mounted on, riding or driving in a race, and all persons mounted on a race horse within the inclosure, and all outriders, pony boys or marshals when engaged in their duties on a race course, shall wear a properly fastened safety helmet. All safety helmets so required are subject to approval of the Board.

1690. Prohibited Equipment.

No spurs or steels, twitches, war bridles, or any other appliances other than regular approved racing equipment shall be used on any horse except with express permission of the stewards, who shall report any such permitted use to the Board with the reasons therefor.

1691. Colors and Number.

A jockey shall be properly attired for riding in a race, wearing the colors of the owner of the horse he is riding, and exhibiting a number on the saddle cloth corresponding to the number of the horse on the official program.

1692. Requirements for Horse, Trainer and Jockey.

Each horse starting in a race must be qualified for that race, ready to run, in physical condition to exert its best effort, and entered with the intention to win. Each trainer having the care or custody of such horse shall be present at the paddock to supervise the saddling of the horse and he shall give such instructions as may be necessary to assure the best performance of the horse. Each jockey going to the post in any race shall race his mount to win and shall give his best efforts in the race to his mount and to the public, and he shall ride his mount out until the finish line is passed.

1693. Control of Horses and Jockeys on Entering the Track

The horses are under the control of the starter from the time they enter the track until dispatched at the start of the race. After entry on the track or race course, the horses are not entitled to further care from their attendants, except in case of accident the starter may permit the jockeys to dismount and the horses to be cared for during the delay; otherwise, no jockey shall dismount until after

the finish of the race. The horse must be started by the jockey, but with the sanction of the starter it may be led to its position in the gate by an assistant starter. With the sanction of the starter an assistant starter may enter the gate to handle a fractious horse. No assistant starter shall in any way impede, whether intentionally or otherwise, a fair start.

1694. Parade of Horses.

All horses shall parade, carrying their weight and wearing their equipment, from the paddock to the starting post. Any horse failing to do so may be declared by the stewards. No lead pony leading a horse in the parade shall be ridden so as to obstruct the public's view of any horse which is to race, except with the permission of the stewards or their delegate who shall report the granting of such permission and the reasons therefor to the Board.

1695. To the Post.

After entering the race course track, not more than twelve minutes shall be consumed in the parade of horses to the post except in cases of unavoidable delay. After passing the stands once, the horses may break formation and canter, warm up or go as they please to the post. When the horses have reached the post they shall promptly be placed in their starting gate stalls in the order of their post positions, unless otherwise ordered by the starter. The starter shall see that the horses are placed in their proper positions without unnecessary delay. Causes for any delay in the start shall immediately be reported to the stewards.

1696. The Start.

Except in cases of emergency, every horse shall be started from an approved starting gate by the starter. If

the doors at the front of the starting gate stall should not open due to a mechanical failure or a malfunction of the starting gate, when the starter dispatches the field, or should a horse not be in the starting gate stall when the field is dispatched, thereby causing such horse to be left, the starter shall immediately report such fact to the stewards, and the stewards may declare such left horse to be a non-starter.

1697. Declaration of Horse by Stewards.

After entering the race course track for the post, a horse shall only be declared by the stewards when they consider such horse unfit to run in the race. No horse determined to be a starter shall be excused or declared from the race. Any horse which breaks through the gate or runs off without effective control shall be examined by the racing veterinarian and determined to be fit to compete before being permitted to start.

1698. Failure to Start and Run.

No person shall willfully or negligently cause any horse whose starting is obligatory to fail to start and run its race.

1699. Riding Rules.

During the running of the race:

(a) A leading horse is entitled to any part of the course but when another horse is attempting to pass in a clear opening the leading horse shall not impede that passing horse by crossing over so as to compel the passing horse to shorten its stride.

(b) A horse shall not interfere with or cause any other horse to lose stride, lose ground or lose position in a part of the race where the horse interfered with loses the

opportunity to place where he might be reasonably expected to finish.

(c) A horse which interferes with another and thereby causes any other horse to lose stride, lose ground, or lose position, when such other horse is not in fault and when such interference occurs in a part of the race where the horse so interfered with loses the opportunity to place where he might, in the opinion of the stewards, be reasonably expected to finish, may be disqualified and placed behind the horse so interfered with.

(d) A jockey shall not ride carelessly or willfully so as to permit his or her mount to interfere with or impede any other horse in the race.

(e) A jockey shall not willfully strike or strike at another horse or jockey so as to impede, interfere with, intimidate, or injure the other horse or jockey.

(f) If a jockey rides in a manner contrary to this rule, his or her mount may be disqualified and he or she may be suspended or otherwise disciplined.

1700. Returning to Finish After the Race.

A jockey, after the race, shall return his horse to the finish and upon returning he shall salute the stewards, and receive the permission of the stewards or their delegate to dismount. The jockey shall present himself with his equipment for weighing in immediately after so dismounting. The stewards may authorize any jockey and horse to participate in a ceremony or other approved special activity provided that such ceremony or special activity is under the observation of the stewards or other racing officials.

1701. Weighing In.

A jockey shall weigh in after the finish of the race and he shall not weigh less than one pound of his proper weight nor two pounds over his proper weight except that the stewards may take into account any excess weight caused by rain or mud. The stewards may disqualify any horse whose jockey weighs in at less than one pound of his proper weight, and shall discipline the persons responsible therefor.

1702. Claim of Interference or Other Foul.

A jockey, trainer or owner of a horse, who has reasonable grounds to believe that his horse was interfered with or impeded or otherwise hindered during the running of the race, or that any riding rule was violated by any other jockey or horse during the running of the race, may immediately make a claim of interference or foul with the clerk of scales, the stewards or their delegate before the race has been declared official. The stewards may thereupon hold an inquiry into the running of the race. No person shall make any claim of interference or foul knowing the same to be inaccurate, false or untruthful.

1703. Jockey Excused from Weighing In.

Should any jockey be unable to present himself for weighing in due to accident, injury, or other good cause, the stewards may excuse such jockey.

1704. Official Order of Finish.

When satisfied that the order of finish is correct, that all jockeys unless excused have been properly weighed in, and that the race has been properly run in accordance with the rules and regulations of the Board, the stewards shall order that the official order of finish be confirmed and the official sign posted for the race. The decision of

the stewards as to the official order of finish for parimutuel wagering purposes is final, and no subsequent action shall set aside or alter such official order of finish for the purposes of parimutuel wagering.

[4 CALIFORNIA ADMINISTRATIVE CODE §§ 1720-1866 OMITTED.]

4 CALIFORNIA ADMINISTRATIVE CODE — ARTICLE 16. GENERAL CONDUCT

1870. Conditions of Meeting Binding Upon Licensees.

The Board, recognizing the necessity of an association to comply with the requirements of its license and to fulfill its obligation to the public and the State of California with the best possible uninterrupted services, in the comparatively short licensed period, herein provides that all associations, officials, horsemen, owners, trainers, jockeys, grooms, platers, association employees, and all licensees, who have accepted directly or indirectly, with reasonable advance notice, the conditions under which said association engages and plans to conduct such race meeting, shall be bound thereby.

1871. Notice of Intention to Terminate.

Any association, officials, horsemen, owners, trainers, jockeys, grooms, platers, association employees, and all licensees, who so accept such conditions pursuant to Section 1870 shall, before they terminate or discontinue their employment, engagements, or activities, give the Board and the association with whom they are engaged, at least 15 days notice in writing of their intentions to terminate or discontinue their employment, engagements or activities under such conditions. The Board may upon

notice to all parties of interest, conduct a hearing with respect to any termination or discontinuance of employment.

1872. Failure to Fulfill Jockey Agreement.

No jockey engaged for a certain race or for a specified time may fail or refuse to abide by his agreement unless excused by the stewards.

1873. Furnishing Racing Selection.

No licensee, employee of the racing association, or employee of any concessionaire of the racing association shall furnish a handicap or selection or racing prediction to any racing prediction or selection service or to any tipster sheet required to file with the Board pursuant to Section 19664 of the Business and Professions Code.

1874. Intoxication.

No licensee, employee of the association or its consessionaires, shall be under the influence of intoxicating liquor, the combined influence of intoxicating liquor and any drug, or under the influence of any narcotic or other drug, while within the inclosure of any association.

1875. Firearms.

No licensee, employee of the association or its consessionaires, shall possess any firearm within the inclosure unless he first obtains a Firearms Permit from the Board's Chief Investigator.

1876. Financial Responsibility.

No licensee shall willfully and deliberately fail or refuse to pay any moneys when due for any service, supplies or fees connected with his operations as a licensee, nor shall he falsely deny any such amount due or the validity

of the complaint thereof with the purpose of hindering or delaying or defrauding the person to whom such indebtedness is due. Any financial responsibility complaint against a licensee shall be in writing, signed by the complainant, and accompanied by documentation of the services, supplies or fees alleged to be due, or by a judgment from a court.

1877. Checks.

No licensee shall write, issue, make or present any check in payment for any license fee, fine, nomination or entry fee or other fees, or for any service or supplies when such licensee knows or should reasonably know that the said check will be refused for payment by the bank upon which it is written, or that the account upon which the check is written does not contain sufficient funds for payment of the said check, or that the check is written on a closed account or a non-existent account. The fact that such a check is returned to the payee by the bank as refused is a ground for suspension pending satisfactory redemption of the returned check.

1878. Workouts.

No trainer shall permit a horse in his charge to be taken onto the tack for training or a workout except during hours designated by the association, and a trainer desiring to engage a horse in a workout shall prior to such workout identify the horse by name when requested to do so by the stewards or their authorized representative.

1879. Interest in Earnings of Jockey.

No owner or trainer shall have an interest in the earnings of a jockey.

1880. Gratuity to Starter or Assistant Starter.

No person shall give to any starter or assistant starter, nor shall any starter or assistant starter receive, money, or other compensation, gratuity or reward, in connection with the running of any race or races; except such compensation as salaries received from associations.

1881. Exclusion of Persons From Race Course.

No person shall enter upon or remain upon the race course the race is to be run over from the time the horses enter the race course from the paddock until the race has been run. This section shall not apply to racing officials, licensees on duty which requires their presence on the course, and such persons who for good cause have been granted permission by the stewards or the Board.

1883. Jockey Guilty of Foul.

The stewards may discipline any jockey whose horse has been disqualified as a result of a foul he commits during the running of a race.

1884. Unsatisfactory Rides.

No jockey shall take his horse back without reasonable cause, or intentionally ride wide on the turns, or otherwise cause his mount to lose ground when there is not reasonable cause for such loss, or otherwise ride in a manner which is inconsistent with using the best efforts of the horse he is riding.

1885. Rough Riding.

Rough riding is defined as a deliberate act in violation of any riding rule, or any willful or wanton act which is the proximate cause of any racing accident or injury to any jockey or his mount during the running of a race. The stewards shall report to the Board any rough riding.

1886. Suspended Jockey May Exercise Horses.

During the term of a suspension, a jockey may exercise horses unless denied such privileges by the stewards or the Board.

1887. Trainer to Insure Condition of Horse.

The trainer shall be the absolute insurer of and responsible for the condition of the horses entered in a race, regardless of the acts of third parties, except as otherwise provided in this article. Should the chemical or other analysis of urine or saliva samples, or other tests, prove positive showing the presence of any narcotic, stimulant, depressant or local anesthetic, the trainer of the horse may be fined, his license suspended or revoked, or be ruled off; and in addition, the owner of the horse, the foreman in charge of the horse, the groom, and any other person shown to have had the care or attendance of the horse may be fined, his license suspended, revoked, or be ruled off.

1988. Defense to Trainer Insurer Rule.

A trainer or other person charged with a violation of Section 1887 may defend, mitigate or appeal the charge if:

(a) He was not, prior to the commencement of any proceeding against him, informed of the charges being brought against him;

(b) He was not permitted counsel, representation or an advisor of his choosing in any hearing before the stewards concerning such charges;

(c) He shows, by a preponderance of evidence, that he made every reasonable effort to protect the horses in his care from tampering by unauthorized persons;

(d) He was not permitted to introduce evidence in his own behalf before any finding or ruling was made against him. Nothing herein shall require that the stewards permit cross-examination of any witness appearing before them, or require that the stewards issue subpoenas for the attendance of witnesses.

1889. Entry to Area Assigned to Trainer.

No person shall enter the stalls, shed row, tack rooms, feed sheds and the immediate adjacent area of such locations, unless such person has prior approval of the trainer to whom such locations are assigned by the association. This section shall not apply to racing officials, investigators of the Board, security officers, or employees or agents of the association who are on duty, law enforcement or fire protection officers, and employees, agents or representatives of the trainer to whom the locations are assigned.

1890. Possession of Contraband.

No person other than a veterinarian licensed by the Board, shall have in his possession on the premises during any recognized meeting any drug which is a narcotic, stimulant, or depressant, or any hypodermic syringe or hypodermic needle or similar instrument which may be used for injection. No person shall have in his possession on the premises during any recognized meeting any electrical stimulating or shocking device commonly known as a battery, or any mechanical stimulating device, or any other appliance which might affect the speed or actions of a horse. The stewards may permit the possession of drugs or appliances by a licensee for personal medical needs under such conditions as the stewards may impose.

1891. Seizure of Contraband.

Investigators of the Board, track security officers or officials shall confiscate any contraband enumerated in Section 1890, and shall confiscate any other drug or device prohibited by federal or state law, from any person within the inclosure who is not in proper legal possession of such drug or device.

1892. Bribes.

No person shall give, or offer or promise to give, or attempt to give or offer, any money, bribe or thing of value to any owner, trainer, jockey, agent, or any other person participating in the conduct of a race meeting in any capacity, with the intention, understanding or agreement that such owner, trainer, jockey, agent or other person shall not use his best efforts to win a race or so conduct himself in such race that any other participant in such race shall be assisted or enabled to win such race; nor shall any trainer, jockey, owner, agent or other person participating at any race meeting accept, offer to accept, or agree to accept any money, bribe or thing of value with the intention, understanding or agreement that he will not use his best efforts to win a race or to so conduct himself that any other horse or horses entered in such race shall thereby be assisted or enable to win such race.

1893. Best Effort Required.

Every jockey going to the post in every race must race his mount to win, must give his best efforts in every race to the mount and to the public, and shall ride his mount out until the finish line is passed. Every trainer who brings a horse in his charge to the paddock warrants that the horse is qualified for the race, ready to run and in the physical condition to exert its best effort, and entered with the intention to win. No person shall instruct or

induce, or attempt to instruct or induce, or otherwise solicit, any jockey or trainer to ride or perform otherwise.

1894. Duties of Trainer.

Trainers are responsible for the condition of horses in their care and are presumed to know the rules. A trainer represents the owner relative to horses which he is training in the matter of entries, declarations, and the naming of jockeys or drivers, unless the owner notifies the stewards in writing to the contrary. A trainer is responsible for the timely attendance of his horse at the receiving barn and paddock and he shall attend his horse in the paddock and be present to supervise the saddling except when relieved of such duty by the stewards. No trainer shall delegate or sublet his duties as a trainer except as provided in this article, nor shall a trainer have any interest in the earnings, winnings, or bonuses of any other trainer.

1895. Trainer's Duty to Insure Licensed Participation.

No trainer shall have in his custody within the inclosure of any race meeting any horse owned in whole or in part by any person who is not licensed as a Horse Owner by the Board unless such owner has filed an Application for License as a Horse Owner with the Board and the same is pending before the Board; nor shall any trainer have in his employ within the inclosure any groom, stable employee, stable foreman, agent, or other person required to be licensed, unless such person has a valid license. All changes of employee personnel shall be reported immediately to the Board.

1896. Assistant or Substitute Trainer.

A trainer who has in his care a substantial number of horses, or who is actively participating in more than one

race meeting at one time, may employ an assistant trainer, who shall be equally responsible with the employing trainer for the condition of the horses in their care. The name of the assistant trainer shall be shown on the official program along with that of the employing trainer. If any licensed trainer is prevented from performing his duties by illness or other good cause, and is absent from the track where he is participating, the stewards shall be immediately notified, and at the same time, a substitute trainer, acceptable to the stewards, shall be appointed and such substitute trainer's name shall be shown on the official program if possible. The stewards shall be advised immediately when the regular trainer resumes his duties. A substitute trainer shall be responsible with the regular trainer for the condition of the horses in his care. Assistant and substitute trainers must be licensed trainers.

1897. Interference with Horses, Racing Participants or Racing Operations.

No person shall directly or indirectly interfere with the leading of horses from the stable area to the receiving barn or to the paddock or in the parade by throwing any article at such horses, by waving hats or arms, or in any other manner frighten such horses; nor shall any person interfere with, block or impede any racing participant who is then performing his proper duties, nor fight, threaten to fight, or strike at any racing participant who is then performing his duties nor interfere with, block, impede or disrupt any racing operation in any manner.

1898. Offering False Information for Wagering.

No licensee or employee of a racing association or its concessionaires shall knowingly or designedly by false representation attempt to, or persuade, procure, or cause another person to wager on a horse in a race to be run in this State or elsewhere; nor shall any licensee or employee

of a racing association or its concessionaires ask or demand compensation as a reward for any racing selection or purported racing prediction provided to any person for wagering purposes. This shall not apply to the vending of newspapers or to other publications approved by the Board.

1899. Offenses Requiring Suspension.

The stewards shall suspend and refer to the Board, any licensee who is within the classes of persons prohibited from participating in parimutuel wagering and prohibited from being present within the racing inclosure.

1900. Grounds for Suspension or Revocation.

Any provision of any rule which is a ground for denial of a license is also a ground for suspension or revocation of a license.

1901. Conflicts of Interest.

The stewards shall determine matters involving conflicts of interest among competing participants.

1902. Conduct Detrimental to Horse Racing.

No licensee shall engage in any conduct prohibited by this chapter nor shall any licensee engage in any conduct which by its nature is detrimental to the best interests of horse racing including, but not limited to:

(a) knowing association with any known bookmaker, known tout, or known felon,

(b) indictment or arrest for a crime involving moral turpitude or which is punishable by imprisonment in the state prison, when such indictment or arrest is the subject of notorious or widespread publicity in the news media,

and when there is probable cause to believe the licensee committed the offenses charged,

(c) solicitation of or aiding and abetting any other person to participate in any act or conduct prohibited by this chapter.

1903. Illegal or Improper Communications Equipment or Devices.

No person shall have in his possession within any racing inclosure any telephonic, radio, semaphore or other signalling or communication equipment or device unless such equipment or device has been approved and its use within the inclosure authorized by the Board. Any such communication equipment or device not authorized by the Board is subject to confiscation by an investigator of the Board.

1904. Communicating Results of Races.

No person shall communicate the results of any race or the parimutuel payoffs of such race to any other person outside the racing inclosure until no less than fifteen minutes have been elapsed after the race has been declared official. This shall not apply to any live broadcast of any radio or television station nor to the private-line telephone communications used for press coverage of the racing program.

[4 CALIFORNIA ADMINISTRATIVE CODE §§ 1920-1930 OMITTED.]

4 CALIFORNIA ADMINISTRATIVE CODE — ARTICLE 18. PARIMUTUEL WAGERING

1950. Parimutuel Wagering.

All forms of wagering, including such forms as the daily double, quinella, special quinella or exacta, and similar or other pool systems may only be used with permission of the Board and in accordance with the provisions of the Horse Racing Law.

1951. Parimutuel Tickets.

A parimutuel ticket is evidence of a contribution to the parimutuel pool operated by the licensee association and is evidence of the obligation of the association to pay to the holder thereof such portion of the distributable amount of the parimutuel pool as is represented by such valid parimutuel ticket. The association shall cash all valid unmutilated winning tickets when such tickets are presented for payment during the course of the meeting where sold, and for a period of 60 days after the last day of the meeting.

(a) To be deemed a valid parimutuel ticket, such ticket shall have been issued by a parimutuel ticket machine operated by the association and recorded as a ticket entitled to a share of the parimutuel pool, and contain imprinted information as to:

(1) The name of the association operating the meeting.

(2) The date of the wagering transaction.

(3) A unique identifying number or code word.

(4) The race number for which the pool is conducted.

(5) The type or types of wager represented.

(6) The number or numbers representing the wagering interests for which the wager is recorded.

(7) The amount or amounts of the contributions to the parimutuel pool for which the ticket is evidence.

(b) No parimutuel ticket recorded or reported as previously paid, cancelled, or non-existent shall be deemed a valid parimutuel ticket by the association.

(c) The association may withhold payment and may refuse to cash any parimutuel ticket deemed not valid or which is presented for encashment by a person believed to be other than the person who contributed to the parimutuel pool as represented by the parimutuel ticket.

1952. Claim for Payment from Parimutuel Pool.

A written, verified claim for payment from a parimutuel pool shall be accepted by the licensee association in any case where the association has withheld payment or has refused to cash a parimutuel ticket presented for payment. The claim shall be made on such form as approved by the Board and the claimant shall make such claim under penalty of perjury. The original of such claim shall be promptly forwarded to the Board.

(a) In the case of a claim made for payment of a mutilated parimutuel ticket which does not contain the total imprinted elements required in Section 1951, the association shall make a recommendation to accompany the claim forwarded to the Board as to whether or not the mutilated ticket has sufficient elements to be positively identified as a winning ticket.

(b) In the case of a claim made for payment of a parimutuel ticket, the Board shall adjudicate the claim and may order payment thereon from the parimutuel pool

or by the association or may deny the claim or make such other Order as it may deem proper.

1953. Lost or Destroyed Tickets.

No claim for a lost or destroyed parimutuel ticket shall be accepted by the association or the Board.

1954. Parimutuel Pools.

The association shall provide, win, place and show pools in any race in which there are five or more separate wagering interests which are obligated to start. The association shall provide win and place pools where there are four separate wagering interests which are obligated to start. The association shall provide a win pool only in any race where less than four separate wagering interests are obligated to start. Upon a showing of good cause, the Board may waive the requirement for a place or show pool in any race.

1955. Distribution of Pools.

After the results of the race have been declared official by the stewards, the parimutuel pools are subject to distribution to the holders of parimutuel tickets entitled to share in the respective pools in accordance with the provisions of the Horse Racing Law and this chapter. When only two horses finish in a race, the show pool, if any, shall be distributed the same as in a place pool. When only one horse finishes in a race the place pool and show pool, if any, shall be distributed the same as in a win pool. In any race in which no horse finishes, or which is declared as no contest by the stewards, all money wagered on the race shall be refunded to the respective ticket holders.

1956. Race Declared Official.

The decision of the stewards regarding the order to finish is final at the time the stewards order the official sign displayed on the totalisator board. No rulings of the stewards or the Board regarding the order of finish or any award of purse money made after the result of the race has been declared official shall affect the parimutuel payoff or the distribution of any parimutuel pool.

1957. Daily Double.

(a) The daily double is not a parlay and has no connection with or relation to the win, place and show pools shown on the totalisator board. All daily double tickets will be calculated in a separate pool.

(b) If no ticket is sold combining the two winners of the daily double, the entire daily double pool, less commission and license fee, shall be distributed as a place pool among the holders of tickets including the winner of the first race of the daily double and those having tickets including the winner of the second race of the daily double.

(c) If no ticket is sold including the winner of the first race of the daily double, then the entire daily double pool, less commission and license fee, shall be distributed equally to the holders of tickets which include the winner of the second race of the daily double.

(d) If no ticket is sold including the winner of the second race of the daily double, then the entire daily double pool, less commission and license fee, shall be distributed equally to the holders of tickets which include the winner of the first race of the daily double.

(e) If no ticket is sold including the winner of either race of the daily double, then the entire daily double pool, less commission and license fee, shall be distributed

equally to holders of tickets which include the horses finishing second in the two races of the daily double.

(f) If no ticket is sold that would require distribution of the daily double pool to a winner under this rule, the association shall make a complete and full refund of the daily double pool.

(g) If for any reason the first race of a daily double is canceled, a full and complete refund will be made of the daily double pool.

(h) If for any reason the second race of the daily double is canceled after the first race of the daily double has been completed, the entire daily double pool, less commission and license fee, shall be distributed in proportion to the amount wagered on those combinations including the winner of the first race of the daily double to holders of tickets which include the winner of the first race of the daily double.

(i) Should any horse entered in either the first or second half of the daily double be scratched, excused by the stewards, or prevented from racing before the race in the first half of the daily double is run, then all money wagered on any horse or horses so excused or prevented from racing shall be deducted from the daily double pool and refunded to the purchaser or purchasers of tickets on the horse or horses so excused or prevented from racing.

(j) Should any horse or horses be scratched, excused by the stewards, or prevented from racing because of the failure of the stall doors or starting gate to open in the last half of the daily double and after the first race in the daily double has been run, all tickets including such horse or horses, shall be deducted from the daily double pool, and the pool or pools, thus formed shall be distributed as a straight pool or pools to the holders of tickets combin-

ing the winner of the first half with the horse or horses, so prevented from completing the daily double.

(k) Entries or field horses in a race comprising the daily double shall race as single wagering interests for the purposes of mutuel pool calculations and payouts to the public. If, in the event that any part of the entry or the field is a starter, there shall be no refund to persons wagering on such entry or field.

(l) If a dead heat should result in either the first or second race of the daily double, the total pool is figured as a place pool.

Example. Should numbers 8 and 5 dead heat in the first race of the daily double, and number 3 win the second, the pool would be divided and apportioned to tickets bearing numbers 8 and 3, and numbers 5 and 3.

1958. Quinella.

(a) The Quinella is not a parlay and has no connection with or relation to the win, place and show pools shown on the totalisator board. All tickets on the Quinella will be calculated in a separate pool.

(b) All Quinella tickets will be for the win and place combination only. When purchasing a Quinella ticket two horses are selected, which must finish 1-2, or 2-1. For example, if numbers 3 and 6 are selected they must come in 3, first and 6, second, or 6, first and 3, second.

(c) Entries or field horses in a race comprising the Quinella shall race as single wagering interests for the purposes of mutuel pool calculations and payouts to the public. If, in the event that any part of the entry or the field is a starter, there shall be no refund to persons wagering on such entry or field. In the event any part of an entry or the field finishes first, the order of finish of all other horses making up such entry or field will be disre-

garded in determining which horse finished second for the purpose of this rule.

(d) Should any horse or horses entered in a Quinella race be scratched or excused by the Stewards after wagering has commenced or should any horse or horses be prevented from racing because of failure to stall doors of the starting gate to open, all tickets including such horse or horses shall be deducted from the Quinella Pool and money refunded to the purchasers of tickets on the horse or horses so excused or prevented from racing.

(e) Should there be no tickets sold on the winning combination in a Quinella race, any and all Quinella tickets bearing the number of the individual win horse and any and all Quinella tickets bearing the number of the individual place horse shall be deemed winning tickets and the payoff shall be calculated as a place pool.

(f) Should there be no tickets sold on the winning combination in a Quinella race and should there be no Quinella tickets sold bearing the number of the individual win horse, any and all Quinella tickets bearing the number of the individual place horse shall be deemed winning tickets and the payoff shall be calculated as a win pool.

(g) Should there be no tickets on the winning combination in a Quinella race, and should there be no Quinella tickets sold bearing the number of the individual place horse, any and all Quinella tickets bearing the number of the individual win horse shall be deemed winning tickets and the payoff shall be calculated as a win pool.

(h) Should there be no tickets on the winning combination in a Quinella race, and should there be no Quinella tickets sold bearing the number of the individual win horse, and should there be no Quinella tickets sold bearing the number of the individual place horse, the Quinella

shall be deemed "No Contest" and all money in the Quinella shall be promptly refunded.

(i) Should, after an official start is effected, only one horse finish the Quinella race, the total money is figured as a win pool, with those who have picked that one horse in the race participating in the pool.

(j) Should a two horse dead-heat for win result in a Quinella race, the two horses involved in the dead-heat shall be winners of the Quinella race.

(k) Should a multiple dead-heat for win result in a Quinella race, all horses involved in the dead-heat shall be winners of the Quinella race and payoffs figured accordingly.

EXAMPLE: Should numbers 1, 3 and 5 dead-heat for win, the winning Quinella combinations would be 1-3, 1-5, 3-1, 3-5, 5-1 and 5-3. The net pool after deducting the amounts wagered on the winning combinations will be equally distributed in payoff calculations on the winning combinations.

(l) Should a two-horse dead-heat for place result in a Quinella race, the total pool is calculated as a place pool.

(m) Should a multiple dead-heat for place result in a Quinella race, all combinations coupling the winning horse with the individual place horses shall be winners of the Quinella race and payoffs calculated accordingly.

1959. Special Quinella, (Exacta).

(a) The Special Quinella is not a parlay and has no connection with or relation to the win, place and show pools shown on the totalisator board. All tickets on the Special Quinella will be calculated in a separate pool.

(b) A Special Quinella race shall be given a distinctive name to be selected by the association conducting such

race, such as "Perfecta" or "Exacta", subject to the approval of the Board.

(c) All Special Quinella tickets will be for the win and place combination only. Each person purchasing a Special Quinella ticket shall designate the exact order in which the first two horses will finish in a Special Quinella race. For example, if number 3 is selected to finish first and number 6 is selected to finish second, they must come in number 3, first and number 6 second in order to win.

(d) Entries or field horses in a race comprising the Special Quinella shall race as single wagering interests for the purposes of mutuel pool calculations and payouts to the public. If, in the event that any part of the entry or the field is a starter, there shall be no refund to persons wagering on such entry or field. In the event any part of an entry or the field finishes first, the order of finish of all other horses making up such entry or field will be disregarded in determining which horse finished second for the purpose of this rule.

(e) Should any horse or horses entered in a Special Quinella race be scratched or excused by the Stewards after wagering has commenced or should any horse or horses be prevented from racing because of the failure of the stall doors of the starting gate to open all tickets including such horse or horses shall be deducted from the Special Quinella Pool and money refunded to the purchasers of tickets on the horse or horses so excused or prevented from racing.

(f) In the event that no ticket is sold on the winning combination of a Special Quinella Pool, the net pool shall be distributed equally among holders of tickets selecting the winning horse to finish first and holders of tickets selecting the second place horse to finish second.

(g) In the event of a dead-heat between two horses for first place, the net pool shall be calculated and distributed as a place pool to holders of the winning combinations.

(h) In the event of a dead-heat between two or more horses for place all tickets designating the proper first horse to win which are coupled with any of the place horses involved in a dead-heat shall be the winners of the Special Quinella race and payoffs calculated according to their respective interest in the net pool.

(i) In the event of a dead-heat for second place, if no ticket is sold on one of the two winning combinations, the entire net pool shall be calculated as a win pool and distributed to those holding tickets on the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead-heat the Special Quinella Pool shall be calculated and distributed to holders of tickets designating the winning horse or either of the place horses according to their respective interest in the net pool.

(j) In the event of a dead-heat among three or more horses for first place, the net pool shall be calculated and distributed to holders of tickets designating any two of the horses participating in the dead-heat according to their respective interest in the net pool.

(k) In the event that no ticket is sold that would require distribution to any winner as above defined the Special Quinella shall be deemed "No Contest" and all money in the Special Quinella shall be promptly refunded.

1959.5 Special Sweepstakes.

(a) The Special Sweepstakes parimutuel pool is not a parlay and has no connection with or relation to any other parimutuel pool conducted by the association, nor to any win, place and show pool shown on the totalisator board,

nor to the rules governing the distribution of such other pools.

(b) A valid Special Sweepstakes ticket shall be evidence of a binding contract between the holder of the ticket and the racing association, and the said ticket shall constitute an acceptance of Special Sweepstakes provisions and rules contained in Article 18.

(c) A Special Sweepstakes may be given a distinctive name to be selected by the association conducting such races, such as "SUPER 6" or "SUPER SWEEPSTAKES", subject to the approval of the Board. The Special Sweepstakes is deemed to be an extension of the daily double form of wagering.

(d) The Special Sweepstakes parimutuel pool consists of amounts contributed for a selection for win only in each of six races designated by the association with the approval of the Board. Each person purchasing a Special Sweepstakes ticket shall designate the winning horse in each of the six races comprising the Special Sweepstakes.

(e) Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the Special Sweepstakes shall race as a single wagering interest for the purpose of Special Sweepstakes parimutuel pool calculations and payouts to the public. However, if any part of either an entry or the field racing as a single wagering interest is a starter in a race, the entry or the field selection shall remain as the designated selection to win in that race for the Special Sweepstakes calculation and the selection shall not be deemed a scratch.

(f) The Special Sweepstakes parimutuel pool shall be calculated in one of two alternative methods, as follows:

(1) Alternative One:

(A) Sixty percent (60%) of the net amount in the parimutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of parimutuel tickets which correctly designate the most official winners of the six races comprising the Special Sweepstakes.

(B) Twenty percent (20%) of the net amount in the parimutuel pool subject to distribution among winning ticket holders shall be distributed among holders of parimutuel tickets which correctly designate the second greatest number of official winners of the six races comprising the Special Sweepstakes.

(C) Twenty percent (20%) of the net amount in the parimutuel pool subject to distribution among winning ticket holders shall be distributed among holders of parimutuel tickets which correctly designate the third greatest number of official winners of the six races comprising the Special Sweepstakes.

(2) Alternative Two:

(A) Sixty percent (60%) of the net amount in the parimutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of parimutuel tickets which correctly designate the most official winners of the six races comprising the Special Sweepstakes.

(B) Forty percent (40%) of the net amount in the parimutuel pool subject to distribution among winning ticket holders shall be distributed among holders of parimutuel tickets which correctly designate the second greatest number of official winners of the six races comprising the Special Sweepstakes.

(3) Alternative Three:

(A) Sixty percent (60%) of the net amount in the parimutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of parimutuel tickets which correctly designate the official winners of the six races comprising the Special Sweepstakes.

(B) Twenty percent (20%) of the net amount in the parimutuel pool subject to distribution among winning ticket holders shall be distributed among holders of parimutuel tickets which correctly designate the greatest number of official winners less than six of the six races comprising the Special Sweepstakes.

(C) Twenty percent (20%) of the net amount in the parimutuel pool subject to distribution among winning ticket holders shall be distributed among holders of parimutuel tickets which correctly designate the second greatest number of official winners less than six of the six races comprising the Special Sweepstakes.

(D) In the event there is no parimutuel ticket properly issued which correctly designates the official winner in each of the six races comprising the Special Sweepstakes, the sixty percent (60%) of the parimutuel pool otherwise distributable as provided in subsection (A) of Alternative Three shall be retained by the association as a distributable amount and shall be carried over and included in the Sweepstakes parimutuel pool for the next succeeding racing date, as an additional net amount to be distributed as provided in subsection (A).

(E) Except as provided in subsection (F), should no distribution be made pursuant to subsection (A) on the last day of the association's meeting, then that portion of the distributable pool and all monies accumulated therein shall be distributed to holders of tickets correctly designating the most winning selections among the six

races comprising the Special Sweepstakes for that day or night; provided, however, that should an association be unable to distribute such retained distributable amount carried over from any prior Special Sweepstakes pool established pursuant to subsection (A) or subsection (D) by the end of its race meeting due to cancellation of the final day(s) or night(s) of racing or any other reason, the retained distributable amount shall be carried forward to the next race meeting of such association at the same location, having a Special Sweepstakes for the same breed of horse as the racing meeting that generated the retained distributable amount, and shall be included in the Special Sweepstakes pool for the first day or night racing at such subsequent race meeting.

(4) The method of distribution shall be selected at the discretion of the racing association at the time it files its license application with the Board.

(g) In the event that insufficient numbers of official winners are designated to permit distribution to holders of parimutuel tickets which correctly designate the second or third greatest number of official winners, any amount not distributable shall be added to the sixty percent (60%) amount in the parimutuel pool subject to distribution to those ticket holders who designate the most official winners of the six races comprising the Special Sweepstakes. In the event there is no parimutuel ticket held which entitles any ticket holder to a distribution pursuant to subsection (f) the Special Sweepstakes shall be cancelled and all tickets refunded.

(h) In the event a Special Sweepstakes ticket designates a selection in any one or more of the races comprising the Special Sweepstakes and that selection is scratched, excused or determined by the Stewards the actual favorite, as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be

substituted for the non-starting selection for all purposes, including pool calculations and payoffs.

(i) In the event of a dead-heat for win between two or more horses in any Special Sweepstakes race, all such horses in the dead-heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

(j) In the event that less than four of the six races comprising the Special Sweepstakes are completed due to races being cancelled or declared no contest, all parimutuel tickets held on the Special Sweepstakes for that day or night shall be refunded and the Special Sweepstakes shall be cancelled in its entirety.

(k) In the event that four or five, but not six, races comprising the Special Sweepstakes are completed as official races in accordance with the regulations of the Board, one hundred percent (100%) of the net amount in the parimutuel pool shall be subject to distribution among holders of parimutuel tickets which correctly designate the most winners in the completed races of the Special Sweepstakes.

(l) No parimutuel ticket for the Special Sweepstakes pool shall be sold, exchanged or cancelled after the time of the closing of wagering in the first of the six races comprising the Special Sweepstakes, except for such refunds on Special Sweepstakes — parimutuel — tickets as required by this regulation, and no person shall disclose the number of tickets sold in the Special Sweepstakes pool or the number or amount of tickets selecting winners of Special Sweepstakes races until such time as the Stewards have determined the last race comprising the Special Sweepstakes to be official.

1959.6 Limited Sweepstakes.

(a) The Limited Sweepstakes parimutuel pool is not a parlay and has no connection with or relation to any other parimutuel pool conducted by the association, nor to any win, place and show pool shown on the totalisator, nor to the rules governing the distribution of such other pools.

(b) A Limited Sweepstakes parimutuel ticket shall be evidence of a binding contract between the holder of the ticket and the association and the said ticket shall constitute an acceptance of the Limited Sweepstakes provisions and rules contained in Article 18.

(c) A Limited Sweepstakes may be given a distinctive name by the association conducting the meeting, subject to approval of the Board.

(d) The Limited Sweepstakes parimutuel pool consists of amounts contributed for a selection for win only in each of six races designated by the association with the approval of the Board. Each person purchasing a Limited Sweepstakes ticket shall designate the winning horse in each of the six races comprising the Limited Sweepstakes.

(e) Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the Limited Sweepstakes shall race as a single wagering interest for the purpose of the Limited Sweepstakes parimutuel pool calculations and payouts to the public. However, if any part of either an entry or the field racing as a single wagering interest is a starter in a race the entry or the field selection shall remain as the designated selection to win in that race for the Limited Sweepstakes calculation and the selection shall not be deemed a scratch.

(f) Except as provided by subsections (i) and (j), the Limited Sweepstakes parimutuel pool shall be calculated as follows:

(1) Fifty percent (50%) of the net amount in the parimutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of parimutuel tickets which correctly designate the official winner in each of the six races comprising the Limited Sweepstakes.

(2) Fifty percent (50%) of the net amount in the parimutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of parimutuel tickets which correctly designate the most official winners, but less than six, among the six races comprising the Limited Sweepstakes.

(3) In the event there is no parimutuel ticket properly issued which correctly designates the official winner in each of the six races comprising the Limited Sweepstakes, the fifty percent (50%) of the parimutuel pool shall not be distributed as provided in subsection (f)(1) but shall be retained by the association as distributable amounts and shall be carried over and included in the Limited Sweepstakes parimutuel pool for the next succeeding racing date as an additional net amount to be distributed as provided in subsection (f)(1).

(4) Except as provided by subsection (l), should no distribution be made pursuant to subsection (f)(1) on the last day of the association's meeting, then that portion of the distributable pool and all monies accumulated therein shall be distributed to the holders of tickets correctly designating the most winning selections among the six races comprising the Limited Sweepstakes for that day or night.

(g) In the event a Limited Sweepstakes ticket designates a selection in any one or more of the races comprising the Limited Sweepstakes and that selection is scratched, excused or determined by the stewards to be a

nonstarter in the race, the actual favorite, as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be substituted for the nonstarting selection for all purposes, including pool calculations and payoffs.

(h) In the event of a dead heat for win between two or more horses in any Limited Sweepstakes race, all such horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

(i) In the event that less than four of the six races comprising the Limited Sweepstakes are completed due to races being cancelled or declared as no contest, all parimutuel tickets held on the Limited Sweepstakes for that day or night shall be refunded and the Limited Sweepstakes shall be cancelled in its entirety for that day or night and any retained distributable amounts carried over from any prior Limited Sweepstakes pool pursuant to subsection (f)(3) shall be carried over to the next succeeding racing date of that meeting.

(j) In the event that four or five, but not six, races comprising the Limited Sweepstakes are completed as official races in accordance with the regulations of the Board, one hundred percent (100%) of the net amount in the parimutuel pool for that day or night, exclusive of any retained distributable amounts carried over from any prior Limited Sweepstakes pool pursuant to subsection (f)(3), shall be subject to distribution among holders of parimutuel tickets which correctly designate the most winners in the completed races of the Limited Sweepstakes. The retained distributable amounts carried over from any prior Limited Sweepstakes pool pursuant to subsection (f)(3) shall be carried over to the next succeeding racing date of that meeting.

(k) No parimutuel ticket for the Limited Sweepstakes pool shall be sold, exchanged or cancelled after the time of the closing of wagering in the first of the six races comprising the Limited Sweepstakes, except for such refunds on Limited Sweepstakes tickets as required by this regulation, and no person shall disclose the number of tickets sold in the Limited Sweepstakes pool or the number or amount of tickets selecting winners of Limited Sweepstakes races until such time as the Stewards have determined the last race comprising the Limited Sweepstakes each day to be official.

(l) In the event that an association is unable to distribute the retained distributable amount carried over from any prior Limited Sweepstakes pool established pursuant to subsection (f)(3) by the end of its race meeting due to cancellation of the final day(s) or night(s) of racing or any other reason, the retained distributable amount shall be carried forward to the next race meeting having a Limited Sweepstakes at the same location and of the same breed of horse as the racing association that generated the retained distributable amount. The retained distributable amount shall be included in the Limited Sweepstakes pool for the first day or night of racing at the subsequent race meeting.

1960. Payoff on Minus Pools.

The association must pay to the holder of any ticket or tickets entitling him to participate in the distribution of a parimutuel pool the amount wagered by such holder plus a minimum of 5% thereof. This requirement is unaffected by the existence of a parimutuel pool which does not contain sufficient money to distribute said 5% to all persons holding such tickets.

1961. Errors in Posted Payoff.

If an error is discovered in the payoff amounts posted on the public board it shall be corrected promptly and an announcement thereof shall be made over the public address system. After the error is discovered the correct amounts shall be used in the payoff.

1962. Payment for Errors.

If an error occurs in the payment amounts for parimutuel tickets which are cashed or entitled to be cashed and as a result of such error the parimutuel pool involved in the error is not correctly distributed among winning ticket holders, the following shall apply:

(a) In the event the error results in an over-payment to ticket holders the association shall be responsible for such payment.

(b) In the event the error results in an under-payment to ticket holders:

(1) The association shall accept timely claims for such under-payment, shall investigate such claims and shall pay each claim, or a part thereof, which it determines to be valid, and shall notify the claimant if his claim is rejected as invalid.

(2) Any person whose claim is rejected by the association may, within 15 days from the date he received the notice of rejection, request the Board to determine the validity of the claim. The failure to file such request with the Board within the said time shall constitute a waiver of the claim.

(3) A hearing shall be held on each such rejected claim timely filed with the Board. The Board shall give notice of such hearing to the claimant and the association. The Board may determine a claim to be valid, in whole or in

part, and thereafter order the association to pay to the claimant the amount of the claim determined to be valid, or may deny the claim in whole or in part. Any such determination shall be final and binding on all parties.

(4) If no valid claims are presented for the amount of the under-payment or any part thereof, the amount of the under-payment shall be paid to the Board.

(c) Any claim not filed with the association within 30 days inclusive of the date on which the under-payment was discovered shall be deemed waived and the association shall have no further liability therefor.

1963. Emergency in Parimutuel Department.

Should any emergency arise in connection with the operation of the parimutuel department of the association, not covered by this chapter, and an immediate decision is necessary, the manager of the parimutuel department shall make the decision and shall make an explanation in detail in a written report to the Board.

1964. Cooperation of Parimutuel Department.

The parimutuel manager and the representatives of any totalisator company or service providing parimutuel equipment or service at any race meeting, shall cooperate fully in any investigation of the Board or in any proceedings before the Board relating to any parimutuel operation.

1965. Acceptance of Wagers from Outside Inclosure.

No association shall accept mailed or telephoned wagers nor knowingly accept any wager made by or for a person who is prohibited from participating in parimutuel wagering.

1966. Probable Odds or Morning Line.

The association shall calculate and print on the official program the probable win odds for each wagering interest in each race. Probable odds are subject to the approval of the stewards.

1967. Closing of Wagering in a Race.

Coincident with the start of a race, the stewards shall lock the parimutuel machines and shall close the wagering in the race, after which time no parimutuel tickets shall be sold for the race. The association shall maintain in good order an electrical or other system approved by the Board for locking the parimutuel machines.

1968. Wagering by Minors Prohibited.

No minor shall purchase or cash any parimutuel ticket. No employee of the association shall knowingly sell to or cash for a minor any parimutuel ticket.

1969. Wagering Prohibited.

No racing official or assistant racing official, parimutuel employee, official camera operator, assistant starter, receiving or detention barn staff member, or employee of the Board, while on duty at a race meeting, shall wager on the result of a race.

1970. Wagering on Competing Horse.

No owner, authorized agent or trainer having a horse entered in a race, or any employee or representative of such owner, authorized agent or trainer, shall wager on any other horse competing in that race, except in races with Quinella or Special Quinella wagering when a wager may be made on a competing horse to finish second.

1971. Wagering by Jockey.

No jockey shall make any wager, or have any wager made in his behalf, in any race in which he participates, except through the owner or trainer and on the horse which he rides. Any owner or trainer wagering for such jockey shall maintain a record of all such wagers and all other presents or other gratuities he has given any jockey. Such records will be furnished the stewards or the Board or its investigators upon demand.

1972. Dead-Heat.

When a race results in a dead heat, the dead heat shall not be run off. When two horses run a dead heat for first place, both win and place pools shall be distributed as place pools; when two horses run a dead heat for second, one-half of the place pool shall be distributed among the holders of place tickets on the winning horse, and one-quarter of the place pool shall be distributed among the holders of place tickets on each of the two horses finishing second. In each such case, the show pool shall be distributed among the holders of tickets for show on the first three horses which finish. In the event of a dead heat for show, one-third of the show pool will be distributed among holders of tickets on the horses which dead heat for third.

1973. Purses for Dead-Heats.

Purses, prizes or awards for a race in which a dead-heat has occurred shall be divided equitably by determination of the stewards.

1974. Wagering Interest.

A wagering interest may be any one horse in a race, or may be two or more horses coupled as a single wagering interest as an "Entry" or the "Field". A declaration or

withdrawal of one horse from a wagering interest which consists of more than one horse shall have no effect on any wagers made on such wagering interest.

1975. Evidence of Pool Distribution.

In the event of loss by the association, its agent or employees, of any evidence of proper distribution of parimutuel pools, including, but not limited to, parimutuel tickets which have been cashed, outs ledgers, parimutuel machine recording registers, or cashier out-slips, the association shall file with the Board within 72 hours of the discovery of the loss a report and supporting affidavits. The Board may approve the report of loss without hearing or may hear the matter in its discretion.

1976. Unlimited Sweepstakes.

(a) The Unlimited Sweepstakes parimutuel pool is not a parlay and has no connection with or relation to any other parimutuel pool conducted by the association, nor to any win, place and show pool shown on the totalisator, nor to the rules governing the distribution of such other pools.

(b) An Unlimited Sweepstakes parimutuel ticket shall be evidence of a binding contract between the holder of the ticket and the association and the said ticket shall constitute an acceptance of the Unlimited Sweepstakes provisions and rules contained in Article 18.

(c) An Unlimited Sweepstakes may be given a distinctive name by the association conducting the meeting, subject to approval of the Board.

(d) The Unlimited Sweepstakes parimutuel pool consists of amounts contributed for a selection for win only in each of nine races designated by the association with the approval of the Board. Each person purchasing an

Unlimited Sweepstakes ticket shall designate the winning horse in each of the nine races comprising the Unlimited Sweepstakes.

(e) Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the Unlimited Sweepstakes shall race as a single wagering interest for the purpose of the Unlimited Sweepstakes parimutuel pool calculations and payouts to the public. However, if any part of either an entry or the field racing as a single wagering interest is a starter in a race the entry or the field selection shall remain as the designated selection to win in that race for the Unlimited Sweepstakes calculation and the selection shall not be deemed a scratch.

(f) The Unlimited Sweepstakes parimutuel pool shall be calculated as follows:

(1) One hundred percent (100%) of the net amount in the parimutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of parimutuel tickets which correctly designate the official winner in each of the nine races comprising the Unlimited Sweepstakes.

(2) In the event there is no parimutuel ticket properly issued which correctly designates the official winner in each of the nine races comprising the Unlimited Sweepstakes, twenty-five (25%) of the net amount in the parimutuel pool shall be distributed among the holders of parimutuel tickets which correctly designate the most official winners, but less than nine, in each of the nine races comprising the Unlimited Sweepstakes, and the remaining seventy-five percent (75%) of the net amount in the parimutuel pool shall not be distributed as provided above but shall be retained by the association as distributable amounts and shall be carried over and

included in the Unlimited Sweepstakes parimutuel pool for the next succeeding racing date as an additional net amount to be distributed as provided in subsection (f)(1).

(g)(1) Except as provided in subsection (k) and subsection (m), should no distribution be made pursuant to subsections (f)(1), then the distributable pool and all monies accumulated therein shall be carried over until that amount equals or exceeds five million dollars ($5,000,000) or such lesser amount as the racing association designates to the Board at the time it files its license application with the Board.

(2) Once the pool and all monies accumulated therein equals or exceeds five million dollars, or such lesser amount designated by the racing association pursuant to subsection (g)(1), that amount shall be distributed on the next racing day as provided in subsection (f)(1); but if no holder of parimutuel tickets correctly designates the official winner in each of the nine races comprising the Unlimited Sweepstakes, then seventy-five percent (75%) of the pool shall be distributed among the holders of the parimutuel tickets which correctly designate the most official winners, but less than nine, in each of the nine races comprising the Unlimited Sweepstakes. The remaining twenty-five percent (25%) of the pool shall be distributed to those holders of parimutuel tickets which correctly designate the next greatest number of official winners.

(h) In the event an Unlimited Sweepstakes ticket designates a selection in any one or more of the races comprising the Unlimited Sweepstakes and that selection is scratched, excused or determined by the stewards to be a nonstarter in the race, the actual favorite, as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be substituted for the nonstarting

selection for all purposes, including pool calculations and payoffs.

(i) In the event of a dead heat for win between two or more horses in any Unlimited Sweepstakes race, all such horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

(j)(1) In the event that all nine races comprising the Unlimited Sweepstakes are cancelled or declared as no contest, all parimutuel tickets held on the Unlimited Sweepstakes for that day or night shall be refunded and the Unlimited Sweepstakes shall be cancelled in its entirety for that day or night and any retained distributable amounts carried over from any prior Unlimited Sweepstakes pool pursuant to subsection (f)(2) shall be carried over to the next succeeding racing date of that meeting.

(2) In the event that fewer than nine, but no more than three, races comprising the Unlimited Sweepstakes are completed due to the cancellation of one or more races or the Stewards declaring one or more races as no contest, the pool for that racing day shall be refunded and the Unlimited Sweepstakes shall be cancelled in its entirety as provided in subsection (j)(1).

(3) In the event that fewer than nine, but no fewer than four, races comprising the Unlimited Sweepstakes are completed due to the cancellation of one or more races or the Stewards declaring one or more races as no contest, one hundred percent (100%) of the net amount in the parimutuel pool for that day or night, exclusive of any retained distributable amounts carried over from any prior Unlimited Sweepstakes pool pursuant to subsection (f)(2), shall be subject to distribution among holders of parimutuel tickets which correctly designate the most

winners in the completed races of the Unlimited Sweepstakes.

The retained distributable amounts carried over from any prior Unlimited Sweepstakes pool pursuant to subsection (f)(2) shall be carried over to the next succeeding racing date of that meeting.

(k)(1) Should no distribution be made pursuant to subsection (f)(1) on the last day of the association's race meeting, then the distributable pool and all monies accumulated therein shall be distributed on that day. Seventy-five percent (75%) of the pool shall be distributed among holders of parimutuel tickets which correctly designate the most official winners, but less that nine, in each of the nine races comprising the Unlimited Sweepstakes. The remaining twenty-five percent (25%) of the pool shall be distributed to those holders of parimutuel tickets which correctly designate the next greatest number of official winners.

(2) In the event that an association is unable to distribute the retained distributable amount carried over from any prior Unlimited Sweepstakes pool established pursuant to subsection (f)(2) by the end of its race meeting due to cancellation of the final day(s) or night(s) of racing or any other reason, the retained distributable amount shall be carried forward to the next race meeting having an Unlimited Sweepstakes at the same location and of the same breed of horse as the racing association that generated the retained distributable amount. The retained distributable amount shall be included in the Unlimited Sweepstakes pool for the first day or night of racing at the subsequent race meeting.

(l) No parimutuel ticket for the Unlimited Sweepstakes pool shall be sold, exchanged or cancelled after the time of the closing of wagering in the first of the nine

races comprising the Unlimited Sweepstakes, except for such refunds on Unlimited Sweepstakes tickets as required by this regulation, and no person shall disclose the number of tickets sold in the Unlimited Sweepstakes pool or the number or amount of tickets selecting winners of Unlimited Sweepstakes races until such time as the Stewards have determined the last race comprising the Unlimited Sweepstakes each day to be official.

(m) The racing association may, at its election, designate to the Board, at the time it files its license application with the Board, one or more racing days (nights) during its racing meeting on which the retained distributable amount carried over from any prior Unlimited Sweepstakes pool established pursuant to subsection (f)(2), shall be distributed as provided in subsection (g)(2), even though the retained amount is less than the amount specified in or designed by the racing association pursuant to subsection (g)(1).

1976.5. Special Unlimited Sweepstakes.

(a) The Special Unlimited Sweepstakes parimutuel pool is not a parlay and has no connection with or relation to any other parimutuel pool conducted by the association, nor to any win, place and show pool shown on the totalisator, nor to the rules governing the distribution of such other pools.

(b) A Special Unlimited Sweepstakes parimutuel ticket shall be evidence of a binding contract between the holder of the ticket and the association and the said ticket shall constitute an acceptance of the Special Unlimited Sweepstakes provisions and rules contained in Article 18 of the Rules and Regulations of the California Horse Racing Board.

(c) A Special Unlimited Sweepstakes may be given a distinctive name by the association conducting the meeting, subject to prior approval of the Board.

(d) The Special Unlimited Sweepstakes parimutuel pool consists of amounts contributed for a selection for win only in each of nine races designated by the association with the approval of the Board. Each person purchasing a Special Unlimited Sweepstakes ticket shall designate the winning horse in each of the nine races comprising the Special Unlimited Sweepstakes.

(e) Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the Special Unlimited Sweepstakes shall race as a single wagering interest for the purpose of the Special Unlimited Sweepstakes parimutuel pool calculations and payouts to the public. However, if any part of either an entry or the field racing as a single wagering interest is a starter in a race, the entry or the field selection shall remain as the designated selection to win in that race for the Special Unlimited Sweepstakes calculation and the selection shall not be deemed a scratch.

(f) The Special Unlimited Sweepstakes parimutuel pool shall be calculated as follows:

(1) One hundred percent (100%) of the net amount in the parimutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of parimutuel tickets which correctly designate the official winner in each of the nine races comprising the Special Unlimited Sweepstakes.

(2) In the event there is no parimutuel ticket properly issued which correctly designates the official winner in each of the nine races comprising the Special Unlimited Sweepstakes, fifteen percent (15%) of the net amount in the parimutuel pool subject to distribution among win-

ning ticket holders, but not including any amounts carried over from any prior day or night, shall be distributed among the holders of parimutuel tickets which correctly designate the most official winners, but less than nine, in the nine races comprising the Special Unlimited Sweepstakes, an additional fifteen percent (15%) of such net amount in the parimutuel pool shall be distributed among the holders of parimutuel tickets which correctly designate the next greatest number of official winners in the nine races, and the remaining seventy percent (70%) of the net amount in the parimutuel pool shall not be distributed as provided above but shall be retained by the association as distributable amounts and shall be carried over and included in the Special Unlimited Sweepstakes parimutuel pool for the next succeeding racing date as an additional net amount to be distributed as provided in subsection (f)(1).

(g)(1) Except as provided in subsection (k), should no distribution be made pursuant to subsection (f)(1), then the distributable pool and all monies accumulated therein shall be carried over until that amount equals or exceeds a maximum amount to be specified in the association's license application. That maximum amount shall not exceed five million dollars ($5,000,000).

(2) Once the pool and all monies accumulated therein equals or exceeds the maximum amount specified pursuant to subsection (g)(1), that amount shall be distributed on the next racing day as provided in subsection (f)(1); but if no holder of parimutuel tickets correctly designates the official winner in each of the nine races comprising the Special Unlimited Sweepstakes, then seventy percent (70%) of the pool shall be distributed among the holders of parimutuel tickets which correctly designate the most official winners, but less than nine, in each of the nine races comprising the Special Unlimited Sweepstakes, fif-

teen percent (15%) shall be distributed among the holders of parimutuel tickets which correctly designate the second greatest number of official winners, and the remaining fifteen percent (15%) of the pool shall be distributed to those holders of parimutuel tickets which correctly designate the third greatest number of official winners.

(h) In the event a Special Unlimited Sweepstakes ticket designates a selection in any one or more of the races comprising the Special Unlimited Sweepstakes and that selection is scratched, excused or determined by the Stewards to be a non-starter in the race, the actual favorite, as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be substituted for the non-starting selection for all purposes, including pool calculations and payoffs.

(i) In the event of a dead heat for win between two or more horses in any Special Unlimited Sweepstakes race, all such horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

(j)(1) In the event that all nine races comprising the Special Unlimited Sweepstakes are cancelled or declared as no contest, all parimutuel tickets held on the Special Unlimited Sweepstakes for that day or night shall be refunded and the Special Unlimited Sweepstakes shall be cancelled in its entirety for that day or night and any retained distributable amounts carried over from any prior Special Unlimited Sweepstakes pool pursuant to subsection (f)(2) shall be carried over to the next succeeding racing date of that meeting.

(2) In the event that fewer than nine, but nor more than three, races comprising the Special Unlimited Sweepstakes are completed due to the cancellations of

one or more races or the Stewards declaring one or more races as no contest, the pool for that racing day shall be refunded and the Special Unlimited Sweepstakes shall be cancelled in its entirety as provided in section (j)(1).

(3) In the event that fewer than nine, but no fewer than four, races comprising the Special Unlimited Sweepstakes are completed due to the cancellation of one or more races or the Stewards declaring one or more races as no contest, one hundred percent (100%) of the net amount in the parimutuel pool for that day or night, exclusive of any retained distributable amounts carried over from any prior Special Unlimited Sweepstakes pool pursuant to subsection (f)(2), shall be subject to distribution among holders of parimutuel tickets which correctly designate the most winners in the completed races of the Special Unlimited Sweepstakes. The retained distributable amounts carried over from any prior Special Unlimited Sweepstakes pool pursuant to subsection (f)(2) shall be carried over to the next succeeding racing date of that meeting.

(k)(1) Should no distribution be made pursuant to subsection (f)(1) on the last day of the association's race meeting, then the distributable pool and all monies accumulated therein shall be distributed on that day. Seventy percent (70%) of the pool shall be distributed among holders of parimutuel tickets which correctly designate the most official winners, but less than nine, in each of the nine races comprising the Special Unlimited Sweepstakes, fifteen percent (15%) of the pool shall be distributed among the holders of parimutuel tickets which correctly designate the second greatest number of official winners, and the remaining fifteen (15%) percent of the pool shall be distributed to those holders of parimutuel tickets which correctly designate the third greatest number of official winners.

(2) In the event that an association is unable to distribute the retained distributable amount carried over from any prior special Unlimited Sweepstakes pool established pursuant to subsection (f) (2) by the end of its race meeting due to cancellation of the final day(s) or nights(s) of racing or any other reason, the retained distributable amount shall be carried forward to the next race meeting having a Special Unlimited Sweepstakes at the same location and of the same breed of horse as the racing association that generated the retained distributable amount. The retained distributable amount shall be included in the Special Unlimited Sweepstakes pool for the first day or night of racing at the subsequent race meeting.

(l) No parimutuel ticket for the Special Unlimited Sweepstakes pool shall be sold, exchanged or cancelled after the time of the closing of wagering in the first of the nine races comprising the Special Unlimited Sweepstakes, except for such refunds on Special Unlimited Sweepstakes tickets as required by this regulation, and no person shall disclose the number of tickets sold in the Special Unlimited Sweepstakes pool or the number or amount of tickets selecting winners of Special Unlimited Sweepstakes races until such time as the Stewards have determined the last race comprising the Special Unlimited Sweepstakes each day to be official.

1977. Daily Triple.

(a) The Daily Triple parimutuel pool is not a parlay and has no connection with or relation to any other parimutuel pool conducted by the association, nor to any win, place and show pool shown on the totalisator board, nor to the rules governing the distribution of such other pools.

(b) A valid Daily Triple ticket shall be evidence of a binding contract between the holder of the ticket and the racing association, and the said ticket shall constitute an acceptance of Daily Triple provisions and rules contained in Article 18 of the Rules and Regulations of the California Horse Racing Board.

(c) A Daily Triple may be given a distinctive name to be selected by the association conducting such races, such as "PICK 3," subject to the prior approval of the Board.

(d) The Daily Triple parimutuel pool consists of amounts contributed for a selection for win only in each of three consecutive races designated by the association with the prior approval of the Board. Each person purchasing a Daily Triple ticket shall designate the winning horse in each of the three races comprising the Daily Triple.

(e) Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the Daily Triple shall race as a single wagering interest for the purpose of the Daily Triple parimutuel pool calculations and payouts to the public. However, if any part of either an entry or the field racing as a single interest is a starter in a race, the entry or the field selection shall remain as the designated selection to win in that race for the Daily Triple calculation, and the selection shall not be deemed a scratch.

(f) The net amount in the parimutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of tickets which correctly designate the winners in all three races comprising the Daily Triple.

(g) If no ticket is sold combining the three winners of the Daily Triple, the net amount in the parimutuel pool shall be distributed among the holders of tickets which

include the winners of at least two of the three races comprising the Daily Triple.

(h) If no ticket is sold combining at least two winners of the Daily Triple, the net amount in the parimutuel pool shall be distributed among holders of tickets which include the winner of any one race comprising the Daily Triple.

(i) If no ticket is sold that would require distribution of the Daily Triple pool to a winner under this rule, the association shall make a complete and full refund of the Daily Triple pool.

(j) If for any reason one of the races comprising the Daily Triple is cancelled, the net amount of the parimutuel pool shall be distributed as provided above in subsections (g) (h) and (i).

(k) If for any reason two or more of the races comprising the Daily Triple are cancelled, a full and complete refund will be made of the Daily Triple pool.

(l) In the event of a Daily Triple ticket designates a selection in any one or more of the races comprising the Daily Triple and that selection is scratched, excused or determined by the stewards to be a non-starter in the race, the actual favorite, as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be substituted for the non-starting selection for all purposes, including pool calculations and payoffs.

(m) In the event of a dead heat for win between two or more horses in any Daily Triple race, all such horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

(n) No parimutuel ticket for the Daily Triple pool shall be sold, exchanged or cancelled after the time of the closing of wagering in the first of the three races compris-

ing the Daily Triple, except for such refunds on Daily Triple tickets as required by this regulation, and no person shall disclose the number of tickets sold in the Daily Triple pool or the number or amount of tickets selecting winners of Daily Triple races until such time as the Stewards have determined the last race comprising the Daily Triple to be official. At the conclusion of the second of the three races comprising the Daily Triple, an association may with the prior approval of the Board display potential distributions to ticket holders depending upon the outcome of the third race of the Daily Triple.

1978. Select Four.

(a) The Select Four parimutuel pool is not a parlay and has no connection with or relation to any other parimutuel pool conducted by the association, nor to any win, place and show pool shown on the totalisator board, nor to the rules governing the distribution of such other pools.

(b) A valid Select Four ticket shall be evidence of a binding contract between the holder of the ticket and the racing association, and the said ticket shall constitute an acceptance of Select Four provisions and rules contained in Article 18.

(c) A Select Four may be given a distinctive name to be selected by the association conducting such races, such as "PICK 4," subject to the approval of the Board.

(d) The Select Four parimutuel pool consists of amounts contributed for a selection for win only in each of four races designated by the association with the approval of the Board. Each person purchasing a Select Four ticket shall designate the winning horse in each of the four races comprising the Select Four.

(e) Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the Select Four shall race as a single wagering interest for the purpose of the Select Four parimutuel pool calculations and payouts to the public. However, if any part of either an entry or the field racing as a single interest is a starter in a race, the entry or the field selection shall remain as the designated selection to win in that race for the Select Four Calculation, and the selection shall not be deemed a scratch.

(f) The net amount in the parimutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of tickets which correctly designate the winners in all four races comprising the Select Four.

(g) If no ticket is sold combining the four winners of the Select Four, the net amount in the parimutuel pool shall be distributed among the holders of tickets which include the winners of any three of the four races comprising the Select Four.

(h) If no ticket is sold combining at least three winners of the Select Four, the net amount in the parimutuel pool shall be distributed among holders of tickets which include the winner of any two races comprising the Select Four.

(i) If no ticket is sold combining at least two winners of the Select Four, the net amount in the parimutuel pool shall be distributed among holders of tickets which include the winner of any one race comprising the Select Four.

(j) If no ticket is sold that would require distribution of the Select Four pool to a winner under this rule, the association shall make a complete and full refund of the Select Four pool.

(k) If for any reason one of the races comprising the Select Four is cancelled, the net amount of the parimutuel pool shall be distributed as provided above in subsections (g), (h), (i) and (j).

(l) If for any reason two or more of the races comprising the Select Four is cancelled, a full and complete refund will be made of the Select Four pool.

(m) In the event a Select Four ticket designates a selection in any one or more of the races comprising the Select Four and that selection is scratched, excused or determined by the stewards to be a non-starter in the race, the actual favorite, as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be substituted for the non-starting selection for all purposes, including pool calculations and payoffs.

(n) In the event of a dead heat for win between two or more horses in any Select Four race, all such horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

(o) No parimutuel ticket for the Select Four pool shall be sold, exchanged or cancelled after the time of the closing of wagering in the first of the four races comprising the Select Four, except for such refunds on Select Four tickets as required by this regulation, and no person shall disclose the number of tickets sold in the Select Four pool or the number or amount of tickets selecting winners of Select Four races until such time as the Stewards have determined the last race comprising the Select Four to be official. Notwithstanding the above, at the conclusion of the third of the four races comprising the Select Four, and association may with the approval of the Board display potential distribution to ticket holders depending upon the outcome of the fourth race of the Select Four.

4 CALIFORNIA ADMINISTRATIVE CODE — ARTICLE 19. POLICING THE PUBLIC INCLOSURE

1980. Persons Prohibited from Wagering.

(a) The following classes of persons are prohibited from participating in parimutuel wagering and from being present within any racing inclosure during a recognized race meeting:

(1) Persons who have engaged in any act of or who have been convicted of bookmaking or illegal wagering.

(2) Persons who have engaged in any act of or who have been convicted of touting.

(3) Persons who have engaged in or who have been convicted of an illegal, corrupt or fraudulent act in connection with horseracing or parimutuel wagering.

(4) Persons who have engaged in any act of or who have been convicted of theft from the person (pickpockets).

(5) Persons who have submitted to be cashed any altered, raised, forged or counterfeit parimutuel ticket.

(6) Persons who have been convicted of a crime involving moral turpitude.

(7) Persons who have been removed from the premises pursuant to Section 1989 of this chapter on more than two occasions during any licensed race meeting or on more than five occasions.

(8) Persons whose license has been revoked by the Board or by any State Horse Racing Commission.

(b) For the purpose of this section:

(1) Bookmaking includes, but is not limited to, any act prohibited by Section 337a of the Penal Code or by Section 19595 of the Business and Professions Code;

illegal wagering, includes, but is not limited to, any act prohibited by Sections 319 through 336, inclusive, of the Penal Code.

(2) Touting includes any act prohibited by Section 337.1 of the Penal Code; and further includes offering to furnish information concerning a selection of a horse for wagering purposes, or predicting the outcome of a race for wagering purposes, in exchange for a parimutuel ticket or other consideration which is contingent on the outcome of the race; or soliciting compensation or a gratuity either before or after a race for any racing information, racing selection or racing prediction for wagering purposes, except in such manner permitted by law.

(3) Corrupt or fraudulent acts include, but are not limited to, any act prohibited by Sections 337b through 337i, inclusive, 337.3, 337.6, 337.7 or 337.8 of the Penal Code.

1981. Duty of Association to Exclude Prohibited Persons.

Associations shall exclude and eject from its enclosures persons who are prohibited from participating in parimutuel wagering and from being present within any racing inclosure during a recognized race meeting. No association shall knowingly issue any admission ticket or credential to such persons, and any admission ticket or credential shall be void if held by such person.

1982. Notice of Exclusion or Ejection.

The Association shall inform any person excluded or ejected from its inclosure of the reason for the ejection or exclusion, and shall notify such person of the provisions of this article. Notification may be made by the delivery to the person excluded or ejected of a copy of this article.

The Association shall immediately notify the Board on the form prescribed by the Board, the name of any person ejected or excluded, the reason for the ejection or exclusion, and such other information as the Board may require.

1983. Application for Hearing.

Any person ejected or excluded from any racing enclosure may file a written application with the Board for a hearing on the question of whether he is within any of the classes of persons who are prohibited from participating in parimutuel wagering and from being present within any racing inclosure. The application shall be on the form proscribed by the Board, and signed by the applicant. The application shall clearly identify the applicant and shall briefly state the circumstances of the ejection or exclusion.

1984. Place and Notice of Hearing.

The application for hearing on exclusion or ejection shall be set for hearing before the Board, a referee designated by the Board, or before a Hearing Officer of the Office of Administrative Hearings. The Board shall mail to the applicant and any other interested party notice of the time and place of the hearing.

1985. Waiver of Hearing.

If an applicant fails to appear at the time and place set for hearing, the Board may take whatever action it deems appropriate.

1986. Determination of Rehabilitation.

If the Board finds that the applicant is within one of the classes of persons who are prohibited from participating in parimutuel wagering and from being present within

any racing inclosure, the Board may, in its discretion, make a further finding that the applicant is rehabilitated and an exception should be made authorizing him to participate in parimutuel wagering in the future.

1987. Notice of Finding and Determination After Hearing.

Upon the conclusion of the hearing, the referee or Hearing Officer shall make findings and determinations on the issues and submit recommendations to the Board. The Board shall consider such findings, determinations and recommendations and shall render its decision. The Board shall notify the applicant in writing of each determination and the decision made by it, and shall enter its decision in its minutes.

1988. Appearance and Evidence at Hearing.

At the hearing before the Board, its referee or Hearing Officer, the applicant is entitled to appear in person and/or by counsel, and such evidence as is necessary and proper to resolve the issues presented shall be received. The applicant may file a written answer or statement in which he may controvert any point at issue, and may present any argument or evidence for consideration. Any association may appear as a party of interest in the matter and at the hearing if it so desires.

1989. Disorderly Persons.

(a) The association may remove from its premises any person who while on the premises:

(1) Is a disorderly person as defined in Section 647 of the Penal Code.

(2) Interferes with any racing operation.

(3) Solicits or engages in any act of prostitution.

(4) Begs, is boisterous, or is otherwise offensive to other persons.

(5) Commits any public offense.

(6) Is intoxicated.

(b) Except as provided in Section 1980(a)(7) of this Chapter, removal of a person from the premises pursuant to this section carries no presumption that the person is within the classes of persons prohibited from participating in parimutuel wagering, and the association may admit such person to its inclosure at any future time.

1990. Denial of Access to Private Party.

Nothing contained in these rules shall be deemed, expressly or impliedly, to prevent an association from exercising the right to deny access to or to remove any person from its premises or property for any reason the association deems appropriate notwithstanding the fact that such reason is not one specified in these rules.

[4 CALIFORNIA ADMINISTRATIVE CODE §§ 2000-2050 OMITTED.]

4 CALIFORNIA ADMINISTRATIVE CODE — ARTICLE 24. SIMULCAST WAGERING

2056. Definitions.

As used in these rules:

(a) "Simulcast," "simulcasting" means live audio-visual electronic signals emanating from a licensed horse racing meeting and transmitted simultaneously with the running of the horse racing events at that meeting, and includes the transmission of parimutuel wagering odds, amounts wagered and payoff on such events, and other horse racing programming relating to the race horses or participants.

(b) "Host," "host association" means the racing association conducting a licensed horse racing meeting when it is authorized by the Board to simulcast its racing program.

(c) "Intrastate simulcast wagering" means parimutuel wagering at a California guest association on California horse racing events being run at a California host association.

(d) "Interstate simulcast wagering" means wagering conducted by a betting system outside the State of California on the results of one or more races being run at a host association.

(e) "Guest," "guest association" means an association authorized by the Board to offer, sell, cash, redeem or exchange parimutuel tickets on races being run at a host association.

(f) "Combined parimutuel pools," "combined pools" means the parimutuel wagers at one or more guest associations being contributed into the parimutuel pools of a host association.

(g) "Satellite facility," "intrastate wagering facility" "extended wagering facility" means the physical premises, structure and equipment utilized by a guest association for the conduct of parimutuel wagering on horse racing events being run elsewhere.

(h) "Satellite transponder," "transponder" means leased space segment time of an earth-orbit communication satellite.

(i) "Uplink" means an earth station broadcasting facility, whether mobile or fixed, which is used to transmit audio-visual signals and/or data on FCC-controlled frequencies, and includes any electronic transfer of the

audio-visual signals from within the racing inclosure to the location of the transmitter at the uplink.

(j) "Downlink" means a receiving antenna coupled with a audio-visual signal receiver compatible with and capable of receiving simultaneous audio-visual signals and/or data emanating from a host association, and includes the electronic transfer of received signals from the receiving antenna to TV monitors within the satellite facility.

(k) "Encryption," "encrypted," "encoded" means the scrambling or other manipulation of the audio-visual signals to mask the original video content of the signal and so cause such signals to be indecipherable and unrecognizable to any person receiving such signal.

(l) "Decoder" means a device and/or means to convert encrypted audio-visual signals and/or data into a form recognizable as the original content of the signals.

(m) "Simulcast operator" means a person licensed by the Board to operate a simulcast wagering system.

(n) "Simulcast service supplier" means a person engaged in providing service, supplies or equipment necessary to the operation of intrastate, interstate or out-of-state simulcast wagering for use by a host association, guest association, simulcast operator, or authorized user, including parimutuel wagering terminals, uplink, downlink, television receivers and related equipment; but does not include persons authorized by the Federal Communications Commission to provide telephone service or space segment time on satellite transponders.

(o) "Authorized user" means a person authorized by the Board to receive, to decode and to use for legal purposes the encrypted simulcast signal of California horse racing events.

(p) "Out-of-State wagering" means acceptance of wagers by a host or guest association in California on the results of races run at a race meeting outside the State of California.

(q) "Inclosure," "inclosure-public" includes areas of the extended wagering facility as defined by sections 19410 and 19410.5 of the Business and Professions Code.

(r) "Association which accepts the wager" means the guest association where the bettor contributes his money to the parimutuel pool and receives a parimutuel ticket.

2057. Duty of Association to Offer Extended Wagering.

(a) Every racing association other than a fair which has an average daily handle of $1,500,000. per day or more shall simulcast its horse racing events, and shall contract with a simulcast operator and/or simulcast service suppliers for the purpose of providing authorized users with its simulcast.

(b) Every racing association which has an average daily handle of less than $1,500,000. per day and every fair which proposes to simulcast its racing program and act as a host association shall file with the Board with its application for license a request for permission to act as a host racing association. The Board shall approve the request if:

(1) The Board determines that the proposed simulcast does not conflict with any approved simulcast from any other meeting being conducted at the same time of day.

(2) An approved simulcast facility elects to receive the simulcast program from the applying racing association.

(3) The net license fee required to be imposed on the applying association for amounts wagered at the satellite facilities is estimated to be not less than the necessary

costs for supervision by the Board at the satellite facilities accepting the association's simulcast program.

(4) The Board determines that the best interests of the public and the sport of horse racing will be served by approval of the request to simulcast the racing program.

(c) A racing association is responsible for the content of its simulcast and shall use all reasonable effort to present a simulcast which offers the viewers an exemplary depiction of its racing program, a periodic display of wagering information, and continuity programming between horse racing events.

(d) Every simulcast will be encrypted using a time displacement decoding algorithm encryption system or an equivalent encryption system approved by the Board.

(e) Every simulcast will contain in its video content a digital display of the actual time of day, the name of the race track from where it emanates, the number of the race being displayed and the sequential fractional time of the race as the race is being run.

(f) Every association shall make its totalizator system available to combine parimutuel pool amounts from guest associations with parimutuel pool contributions accepted as its own facility.

(g) In the event the association is authorized by the Board to simulcast a feature race for wagering use by any California racing association or satellite facility and is authorized not to combine the wagers made at such other association or facility with its own parimutuel pools, the association shall nevertheless pay the license fee on all amounts wagered on the feature race based on the license fee schedule applicable to its race meeting.

2058. Application and Approval of Extended Facility.

(a) No person shall conduct or attempt to conduct wagering on the results of races simulcast from a race meeting held in this State unless authorized and permitted to do so by the Board.

(b) The governing body of a fair proposing to act as a guest association shall file with the Board an application for approval as an extended wagering facility upon the following conditions:

(1) Such governing body has determined that the conduct of simulcast wagering at its facility best serves the interests of its fair.

(2) The Department of Food and Agriculture endorses its request for approval except that such endorsement is not required for the California Exposition and State Fair and the Los Angeles County Fair.

(3) An agreement has been executed with a simulcast operator for the conduct of simulcast wagering at its facility.

(4) Plans for the proposed simulcast wagering facility, its public accommodations, equipment, concessions, security controls, and management organization are submitted for approval of the Board.

Except in the case of the California Exposition and State Fair and the Los Angeles County Fair, such plans shall be submitted to the Board by the Department of Food and Agriculture with its recommendation.

(c) A racing association proposing to act as a guest association shall file with the Board an application for approval as an extended wagering facility upon the following conditions:

(1) Plans for the proposed simulcast wagering facility, its public accommodations, equipment, concessions, security controls, and management organization are submitted for approval of the Board.

(2) The person has executed an agreement with a simulcast operator for the conduct of simulcast wagering at its facility; or has contracted with simulcast service suppliers and executed an agreement with one or more host associations to act as a guest association; or

(3) In the event the person has not executed an agreement with a simulcast operator for the conduct of the simulcast wagering, a surety in the amount of $100,000. in such form as the Board may require shall be maintained during the period the person is approved as an authorized user to ensure payment of parimutuel wagering amounts pursuant to statute, and operational expenses, salaries, wages and/or employee benefits to which it is or may be obligated.

(d) Every such extended facility shall be inspected not less than annually by the fire authority having jurisdiction and a certification that the facility meets a reasonable standard of fire safety filed with the Board.

(e) Every such extended facility shall be equipped with a downlink system consisting of a network broadcast quality satellite receiving antenna coupled with a broadcast specification Ku and/or C band receiver compatible with the encryption system used, with motorized directional control, electrical service, coaxial cabling, closed-circuit TV monitors and audio system, and a public address system.

(f) The facility shall provide an enclosed patron area, parimutuel lines, concession areas for sale of food and beverages, and automobile parking area of sizes commensurate with its estimated maximum daily attendance, and offices for the use of the Board and the resident parimutuel manager.

(g) The guest association shall appoint a facility manager whose appointment is subject to the approval of the Board, and the Board shall appoint a Steward as its direct representative.

(h) Every person employed by a guest association in any capacity required to be licensed pursuant to section 1481 of the Board's rules shall hold a valid license issued by the Board.

(i) Every guest association shall maintain such security controls over its inclosure and premises as the Board's Chief Investigator shall direct; and shall remove, deny access to, eject or exclude persons whose presence within the inclosure is inimical to the interests of the state as provided by sections 1980 and 1989 of the Board's rules.

(j) No guest association shall conduct wagering on any simulcast of any race run at other than the meeting of its host association(s) until it has received permission to do so from the Board.

(k) No guest association shall discontinue its operation without having given the Board fifteen (15) days notice of such termination.

(l) The Board shall notify an applicant within seven (7) days if its application is incomplete or defective; and shall give its approval, or refuse or deny the approval, within sixty (60) days of the filing of the application unless the applicant requests and is granted a continuance. In the event the Board refuses or denies its approval, the applicant has thirty (30) days to request

reconsideration of the Board's decision. If reconsideration is denied, the applicant has thirty (30) days thereafter to file for Superior Court review in accordance with section 19463 of the Business and Professions Code.

2059. Licenses for Simulcast Operators.

(a) Every person acting as a simulcast operator shall procure a license from the Board and no person shall act in the capacity of a simulcast operator without a valid license.

(b) A license as simulcast operator shall be granted to any person who makes application therefore and who:

(1) If a natural person, is qualified for an occupational license pursuant to sections 1481 through 1510 of the Board's Rules.

(2) If other than a natural person, is a partnership, joint venture, corporation or other entity authorized to conduct business in this State whose principals, general partners, officers, and directors and all holders of a financial interest amounting to 5% or more of the entity are qualified for occupational license pursuant to section 1481 through 1510 of the Board's rules.

(3) If other than a joint powers authority, submits a financial statement and has a capitalization of not less than $1,500,000.

(4) If other than a joint powers authority, deposits with the Board a surety in the amount of $250,000. to ensure payment of distributable amounts of parimutuel pools pursuant to statute, operational costs, salaries, wages, benefits, and related financial obligations.

(5) Demonstrates that its management personnel have experience in the conduct of simulcast wagering and/or parimutuel wagering operations by having engaged in

such operations in a management capacity for a racing association or simulcast operator for not less than one year in the period preceding the date of application.

(6) Pays a license fee in the amount of $1,000 for the license whose term shall be not more than three (3) calendar years and which shall expire on December 31 of the third year following issuance.

(c) A license as simulcast operator shall not be granted to:

(1) Any person ineligible to conduct business in this state pursuant to any federal or state statute.

(2) Any corporation or organization wherein the majority financial interest (over 50%) is held by a racing association licensed by the Board; however, two or more racing associations may hold a collective financial interest in excess of 50%.

(3) A person who has failed, refused or neglected to comply with any rule, regulation, condition of license, or order of the Board or its Stewards reasonably related to its conduct as a simulcast operator.

(4) A person who has engaged in any activity which is a grounds for denial, suspension or revocation of license pursuant to the rules of the Board.

(5) A person whose general partner(s), officer(s), director(s), or employee(s) has or have engaged in any unlawful activity determined to be conduct detrimental to the best interests of horse racing within the purview of Section 1902 of the Board's rules.

(d) The Board shall notify an applicant for license as simulcast operator within seven (7) days following the filing of the application for license if the application is incomplete or deficient. The Board shall issue the license, or shall refuse or deny the license, within sixty (60) days

of receipt of the application. If refused or denied the license, the applicant shall be notified, in writing, of the reasons therefore, and has thirty (30) days from the date of the notification to request reconsideration of decision by the Board. If reconsideration is denied, the applicant thereafter has thirty (30) days to file for Superior Court review in accordance with section 19463 of the Business and Professions Code.

2060. Duties of Simulcast Operator.

A simulcast operator conducts and operates a parimutuel wagering system at one or more guest associations on the results of horse races being held or conducted and simulcast from the enclosures of one or more host associations pursuant to its agreement with such guest and host associations and with the approval of the Board.

(a) A simulcast operator shall provide:

(1) An uplink system which shall not interfere with the closed circuit television system utilized by the host association for officiating and on-track patron information.

(2) An uplink system consisting of a Ku and/or C band earth station with steerable reflector feed, Ku and/or C band transmit/receive antenna compliant with the FCC two degree beam width regulation, Ku and/or C band transmitters, switching unit, TV color monitors, video tape recorders, encryption system and controlling computer terminals; all to be of network broadcast quality and meet applicable FCC and Board regulations and orders.

(3) A transponder.

(4) Parimutuel terminals, parimutuel odds display, modems and/or switching units enabling parimutuel data transmissions, and data communication to and from the totalizator utilized by the host association.

(5) A voice communication system between each guest association and the host association providing direct voice contact among the stewards and parimutuel departments.

(b) A simulcast operator shall conduct the parimutuel wagering at a guest association pursuant to the Board's rules.

(c) A simulcast operator shall appoint a resident parimutuel manager for each guest association who shall maintain a listing of all parimutuel employees and totalizator technicians employed at the guest association.

(d) The simulcast operator in conjunction with the host association, shall retain for not less than 30 days a video record of all simulcasts and shall provide a copy of such record on either a ½" or ¾" video cassette when requested by the Board.

(e) Not less than 30 minutes prior to the commencement of transmission of the racing program for each day or night, the simulcast operator shall initiate a test program of its transmitter, encryption and decoding, and data communication to assure proper operation of the system.

(f) The simulcast operator shall, at the request of any representative of the Board, display a listing of all locations enabled to receive the simulcast in decoded form.

(g) The simulcast operator shall maintain such security controls over its uplink and communications system as directed by the Board's Chief Investigator.

(h) The simulcast operator shall, in conjunction with the host association, maintain all moneys subject to distribution from amounts wagered in a depository approved by the Board, and the simulcast operator and its officers, directors and managers are jointly and severally responsi-

ble for distribution of such amounts pursuant to relevant provisions of the Horse Racing Law.

(i) A simulcast operator shall, in conjunction with the host association or associations for which it operates parimutuel wagering, provide the Board with an audited report of its parimutuel operations at the guest associations not more than 90 days following the conclusion of each race meeting conducted by a contracting host association; and shall offer its business records for examination by the Board at its request.

(j) The simulcast operator shall retain the percentage and/or amounts specified by applicable provisions of the Horse Racing Law for reimbursement of its costs for the operation of simulcast wagering; and upon evidence satisfactory to the Board by way of a verified claim that its costs for operations meet or exceed the retained percentage amount or an amount equal to actual expenses, whichever shall be less, shall be entitled to claim the amount as reimbursement.

(k) Every simulcast operator shall file with the Board an annual report of its simulcast operations and an audited financial statement.

2061. Out-of-State and Interstate Wagering.

(a) The Board shall authorize a racing association or a guest association to conduct simulcast wagering on the results of one or more races conducted by an out-of-state racing association, provided:

(1) The association intending to conduct wagering on an out-of-state race files with the Board a copy of the agreement with the out-of-state association and the written approvals required by Chapter 57, commencing with section 3001, of Title 15 of the United States Code, and a statement setting forth the date and time it intends to

commence accepting wagers on the out-of-state race or races.

(2) The Board approves the methods by which the out-of-state association intends to transmit the simulcast of its race or races and the restrictions, if any placed on the use of such simulcast, and the methods to be used to assure separate voice communication system between its stewards and the stewards at the track where the race or races are held.

(3) The out-of-state race or races are qualified feature events and the fee to be paid for use of the out-of-state race or races does not exceed 50% of the retained amount from parimutuel wagers after deduction for license fees, local government fee, and any mandated guest association fee.

(4) The Board determines that the conduct of wagering on such race or races best serves the interest of the public and the sport of horse racing.

(b) The Board shall authorize a racing association to use its simulcast for interstate wagering by out-of-state betting systems provided:

(1) The association files with the Board a copy of the agreement with the out-of-state betting system which sets forth the payment to the association for use of its simulcast, and of any agreements required by Chapter 57, commencing with section 3001, of Title 15 of the United States Code.

(2) Payment of the license fee required by section 19602(b) of the Business and Professions Code be made weekly, on the day specified by the Board accompanied by a transmittal statement setting forth the gross amount received by the association from the interstate wagering use of its simulcast and the distribution of that gross amount.

(3) The simulcast complies with section 2057(d), (e) and (f) of the Board's rules.

(4) The Board determines that use of the simulcast by the out-of-state wagering systems best serves the interests of the public and the sport of horse racing.

CALIFORNIA BUSINESS AND PROFESSIONS CODE

§ 19401. Intent of chapter

The intent of this chapter is to allow parimutuel wagering on horseraces, while:

(a) Assuring protection of the public;

(b) Encouraging agriculture and the breeding of horses in this state; and

(c) Generating public revenues.

(d) Providing for maximum expansion of horseracing opportunities in the public interest.

(e) Providing uniformity of regulation for each type of horseracing.

19414.5. "Racing days"; "Racing weeks"

"Racing days" are days on which a licensed racing association is authorized by the board to conduct horseracing. "Racing weeks" are seven consecutive days during which a licensed racing association is authorized by the board to conduct horseracing from a minimum of five racing days. Fractional racing weeks may be authorized by the board at the beginning and end of any horseracing meeting but shall not total more than one week, except that if a licensed racing association holds a split meeting, each part of the split meeting shall be deemed a horseracing meeting solely for the purposes of authorizing fractional racing weeks.

§ 19420. Jurisdiction of board

Jurisdiction and supervision over meetings in this State where horse races with wagering on their results are held or conduted, and over all persons or things having to do with the operation of such meetings, is vested in the California Horse Racing Board.

CALIFORNIA PENAL CODE

§ 337a. [Pool-selling or book-making: keeping place for recording bets: Holding or forwarding stakes: Registering bets: Permitting room, etc., to be used for prohibited purpose: Making or accepting bets: Punishment: Application to single act.] Every person,

1. Who engages in pool selling or book-making, with or without writing, at any time or place; or

2. Who, whether for gain, hire, reward, or gratuitously, or otherwise, keeps or occupies, for any period of time whatsoever, any room, shed, tenement, tent, booth, building, float, vessel, place, stand or enclosure, of any kind, or any part thereof, with a book or books, paper or papers, apparatus, device or paraphernalia, for the purpose of recording or registering any bet or bets, or any purported bet or bets, or wager or wagers, or any purported wager or wagers, or of selling pools, or purported pools, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of man or beast, or between men, beasts, or mechanical apparatus, or upon the result, or purported result, of any lot, chance, casualty, unknown or contingent event whatsoever; or

3. Who, whether for gain, hire, reward, or gratuitously, or otherwise, receives, holds, or forwards, or purports or pretends to receive, hold, or forward, in any manner whatsoever, any money, thing or consideration of value, or

the equivalent or memorandum thereof, staked, pledged, bet or wagered, or offered for the purpose of being staked, pledged, bet or wagered, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of man or beast, or between men, beasts, or mechanical apparatus, or upon the result, or purported result, of any chance, casualty, unknown or contingent event whatsoever; or

4. Who, whether for gain, hire, reward, or gratuitously, or otherwise, at any time or place, records, or registers any bet or bets, wager or wagers, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of man or beast, or between men, beasts, or mechanical apparatus, or upon the result, or purported result, of any lot, chance, casualty, unknown or contingent event whatsoever; or

5. Who, being the owner, lessee or occupant of any room, shed, tenement, tent, booth, building, float, vessel, place, stand, enclosure or grounds, or any part thereof, whether for gain, hire, reward, or gratuitously, or otherwise, permits the same to be used or occupied for any purpose, or in any manner prohibited by subdivision 1, 2, 3 or 4 of this section; or

6. Who lays, makes, offers or accepts any bet or bets, or wager or wagers, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of man or beast, or between men, beast, or mechanical apparatus, is punishable by imprisonment in the county jail for a period of not more than one year or in the state prison.

(a) In any accusatory pleading charging a violation of this section, if the defendant has been once previously

convicted of a violation of any subdivision of this section, the previous conviction shall be charged in the accusatory pleading, and, if the previous conviction is found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or is admitted by the defendant, the defendant shall, if he is not imprisoned in the state prison, be imprisoned in the county jail for a period of not more than one year or pay a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000), or be punished by both such fine and imprisonment. Nothing in this paragraph shall prohibit a court from placing such a person on probation, provided, however, that such person shall be required to pay a fine of not less than five hundred dollars ($500) nor more than five thousand ($5,000) or to be imprisoned in the county jail for a period of not more than one year as a condition thereof. In no event does the court have the power to absolve a person convicted hereunder from either being imprisoned or from paying a fine of not less than five hundred dollars ($500).

(b) In any accusatory pleading charging a violation of this section, if the defendant has been previously convicted two or more times of a violation of any subdivision of this section, each such previous conviction shall be charged in the accusatory pleadings; and if two or more of such previous convictions are found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or are admitted by the defendant, the defendant shall, if he is not imprisoned in the state prison, be imprisoned in the county jail for a period of not more than one year or pay a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or be punished by both such fine and imprisonment. Nothing in this paragraph shall prohibit a court from placing such a person on probation, provided, however, that such person shall be required to pay a fine of not less than one

thousand dollars ($1,000) nor more than five thousand dollars ($5,000) or to be imprisoned in the county jail for a period of not more than one year as a condition thereof. In no event does the court have the power to absolve a person convicted hereunder from either being imprisoned or from paying a fine of not less than one thousand dollars ($1,000).

Except where the existence of a previous conviction of any subdivision of this section was not admitted or not found to be true pursuant to this section, or the court finds that a prior conviction was invalid, the court shall not strike or dismiss any prior convictions alleged in the information or indictment.

This section shall apply not only to persons who may commit any of the acts designated in subdivisions 1 to 6 inclusive of this section, as a business or occupation, but shall also apply to every person or persons who may do in a single instance any one of the acts specified in said subdivisions 1 to 6 inclusive.

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } ss.:

I am a citizen of the United States and a resident of or employed in the City of Los Angeles, County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 1706 Maple Avenue, Los Angeles, CA 90015.

On March 13, 1989, I served the within Petition For Writ of Certiorari in re: "McClatchy Newspapers, Inc. v. Paul Mosesian" in the United States Supreme Court October Term 1988 No. ..., on all parties interested in said action, by placing three true copies thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mail box at Los Angeles, California, addressed as follows:

Roger T. Nuttall, Esq.
2333 Merced Street
Fresno, CA 93721

Paul S. Mosesian, Esq.
2513 W. Shaw Avenue,
Suite 104
Fresno, CA 93711

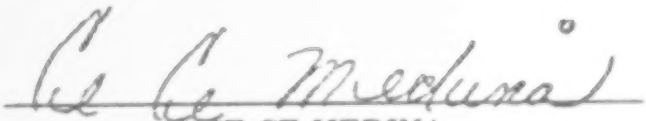
Presiding Judge
Fresno County Superior Court
County Courthouse
1100 Van Ness, Room 103
Fresno, CA 93721

Presiding Justice
Fifth District Court of Appeal
2550 Mariposa Street
Room 5002, State Building
Fresno, CA 93721

All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 13, 1989, at Los Angeles, California.



CE CE MEDINA